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IN THE

Supreme Court of the United States

October Term, 1954

No. 596

CHARLES L. BROWN, GWEN G. BROWN, ELVA P. BOLDS, FRED E. BOLDS, R. L. MARKHAM, GRACE S. MARKHAM, WALTER E. BOSWELL, EVELYN G. BOSWELL, JACOB L. MUEHL, CHESTER HOLLEY, MARGARET K. HOLLEY, WILLIAM M. WOMBLE, MARION E. WOMBLE, GUY E. BENNETT, CHARLES R. WALKER, MARGARET C. WALKER, TALBERT B. RANDALL, NELLIE M. RANDALL, ROBERT F. SABIN, MARY RUTH SABIN, EMMETT C. PROCTOR, C. R. MEYER, ELIZABETH MEYER, LLOYD A. ANDERSON, CHARLES CACCAMO, W. F. EBSARY and FRANCES HELSMAN,

Petitioners,

—vs—

S. E. BRITTON,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Florida

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Petitioners,

—vs—

S. E. BRITTON,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Florida

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Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Florida, entered in the above entitled case on September 3, 1954, rehearing denied on November 15, 1954.

CITATIONS TO OPINIONS BELOW:

The opinion and decree of the Circuit Court of the Thirteenth Judicial Circuit of the State of Florida, In and For Hillsborough County, (R. 216-219) is unreported and is printed in Appendix B hereto, infra, pp. 83-86. The opinion of the Supreme Court of Florida, printed in Appendix B hereto, infra, pp. 87-94, is reported in Southern Reporter, Advance Sheets, dated December 23, 1954, 75 So. 2d 753.

JURISDICTION:

The judgment of the Supreme Court of Florida was entered on September 3, 1954. (R. 246.) A timely petition for rehearing filed September 18, 1954, (R. 248-254), was denied November 15, 1954, (R. 256).

The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3).

HOW FEDERAL QUESTION IS PRESENTED

The statute of the State of Florida, Chapter 24592, Laws of Florida, Special Acts of 1947, which is the general zoning law of Hillsborough County, Florida, and the general zoning regulations of said County, as construed and applied by the Supreme Court of Florida in this case violated the rights of petitioners under Amendment V and XIV of the Constitution of the United States, in that the notices required by due process of law were not given in connection with a change in a zoning use classification by a resolution dated August 29, 1952.

POINT No. 1

The statute required a public hearing on a petition to amend, supplement or change the zoning regulations, and required *"at least fifteen days notice of the time and place of such hearing shall be published in a paper of general circulation in such county."*

The Supreme Court of Florida held that publication of the notice of public hearing for *fourteen* (14) days was compliance with the statute. (Opinion—Appendix B, pp. 87-94.

POINT No. 2

The Board of County Commissioners of Hillsborough County, Florida, rezoned more land than was described in the published notice. The Supreme Court of Florida stated in its opinion *"The description of the property in the resolution is different from the description given in the published notice, but it appears that the latter description includes the former property and appellants have not demonstrated otherwise."* An examination of the description of the land in the published notice and in the resolution adopted by the Board of County Commissioners will disclose that the Board rezoned a tract of land two hundred (200) feet, north and south, abutting on Dale Mabry Highway and one hundred fifty (150) feet, east and west, which was not described in the published notice, and which tract of land was a part of the drive-in theatre site. (Petition for rehearing—map attached, Appendix C, pp. 96-102).

POINT No. 3

The general zoning regulations of Hillsborough County, Florida, in Section VII (3) require a petitioner for a change of zone classification ". . . *to give notice of his intentions by registered mail to all the landowners*

within the area as set forth in Section 5, Chapter 24592 (No. 978), Senate Bill No. 1015. Registered letters shall carry return cards, which cards must be presented with the petition as evidence of notification . . ." (R. 11). THE NOTICE WAS NOT MAILED TO ANY LANDOWNER. The petitioners own homes abutting on the proposed drive-in theatre site and are landowners to whom said notice was required to be mailed, and none of the petitioners were notified of the public hearing.

The Supreme Court of Florida held in its opinion that in adopting the resolution of August 29, 1952, the Board of County Commissioners had the power to, and did, *waive* the above regulation requiring notice. (Apendix B, pp. 87-94).

POINT No. 4

The general zoning regulations permit drive-in theatres only in zoning use classifications "C-2" and "C-3", and further provide, in Section IX. RETAIL COMMERCIAL DISTRICT "C-2" A. Uses permitted. . . . "11. Drive-in theatres where site and arrangement of inlets and exits have been approved by the Board of Adjustment."

The trial court and the Supreme Court of Florida held that the respondent was entitled to a permit to build a drive-in theatre on his land without complying with this provision of the zoning use regulations.

The question of lack of notice to petitioners was raised in the answer of intervenors filed in the trial court and in the assignments of error on appeal to the Supreme Court of Florida. The specific averments of the answer and the assignments of error are contained

in Appendix C. The question was argued in the brief and on oral argument before the Supreme Court of Florida.

The decision of the Supreme Court of Florida, in construing and applying the provisions of the statute, came as a surprise to the petitioners because of the uniform holdings of that Court as to published notice and the zoning regulations. The violation of their rights under Amendments V and XIV of the Constitution of the United States were timely asserted in the petition for a rehearing (Appendix C, pp. 96-102, R. 248-254), which was denied by the Supreme Court of Florida without opinion. (R. 256, Appendix B, p. 94).

The importance of the question is apparent when it appears that the same type of published notice is prescribed by Chapter 176, Florida Statutes (Section 176.05), under which statutes all zoning use regulations of municipalities are enacted. The general zoning laws of Dade County, Florida, in which the City of Miami is located, contains the same provision as to notice, (Chapter 17833, Laws of Florida, Acts 1937, Section 4), as do other zoning laws of the State of Florida pertaining to other counties.

The question is of further importance because it has not been considered by the Supreme Court of the United States, and the specific provision for "at least fifteen days" published notice is the common provision in zoning laws throughout the United States.

The Supreme Court of Florida has uniformly held that where an act is required to be done within a specified number of days *from* or *after* a given occurrence, in computing such period either the day on which the occurrence (such as the giving of notice) transpires or

the day of performance must be excluded and the other included. The rule usually adopted in such cases has been to exclude the day of giving the notice and include the day of required performance. Several courts of last resort of other states have construed the meaning of the words *"at least fifteen days"* and have held that such language means fifteen full and clear days between the time of the first publication of the notice and the time fixed for a public hearing. The medium of publication in this case was The Tampa Daily Times, which is an afternoon newspaper distributed to the public around noon. The notice was published on August 14, 1952, and thereafter in the issues of August 21, 1952, and August 28, 1952, prior to the public hearing, the time of which was set at 2:00 P. M. on Friday, August 29, 1952. (Original exhibit of Plaintiff, A-13).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on a Writ of Certiorari: *Fiske v. State of Kansas,* 274 U. S. 380; *Brinkerhoff-Faris Trust Co. v. Hill,* 281 U. S. 673; *Missouri ex rel. Missouri Ins. Co. v. Gehner,* 281 U. S. 313; *Saunders v. Shaw,* 244 U. S. 317.

QUESTIONS PRESENTED:

QUESTION No. 1

Where the statutory law and zoning regulations, which have the force and effect of law, require published notice and a notice by registered mail to abutting landowners of a public hearing on a petition for a change in a zoning use classification, and it appears that the published notice was not published for the length of time required by the statute prior to the public hearing,

that no notice by registered mail to the abutting landowners was given, and the Board of County Commissioners, in adopting a resolution, rezoned more land than was described in the published notice, and it appearing that the abutting landowners had no actual notice of the public hearing, did the Supreme Court of Florida deny due process of law to the abutting landowners under the provisions of Amendments V and XIV to the Constitution of the United States by construing and applying the statute and the zoning regulations in such a manner as to hold that the notice as given was sufficient to comply with due process of law?

QUESTION No. 2

Assuming the facts stated in Question No. 1 to be true, can any equitable estoppel be raised against the Board of County Commissioners by the petitioner for the change in the zoning use classification by his expending money in preparing the site and purchasing equipment for a drive-in theatre, where it also appears that no application for a permit to build a drive-in theatre had been made nor any permit granted, and the petitioner had likewise failed to apply to the Board of Adjustment for approval of the site and the inlets and exits of the proposed drive-in theatre, as was required by the general zoning regulations before a permit could be issued? The Supreme Court of Florida held that equitable estoppel could be raised under these facts.

QUESTION No. 3

Where an equitable estoppel is raised against the Board of County Commissioners sitting as a Zoning Board in connection with general zoning regulations, based upon expenditures of money claimed to have been made in preparing to build a drive-in theatre, under the

authority of an invalid and void change in zoning use classification on the land, and the only evidence of such expenditures is contained in a transcript of testimony which, although hearsay evidence, was admitted in evidence by the trial court, is such evidence competent evidence upon which to raise any such equitable estoppel?

QUESTION No.4

Where complete jurisdiction over all zoning matters become vested in the City of Tampa, a municipal corporation of the State of Florida, prior to the entry of a declaratory decree in a suit involving zone classification of plaintiff's land, and the zoning authorities of the County of Hillsborough were divested of any power or jurisdiction to zone, rezone, or enforce zoning regulations in any manner, is the City of Tampa a *necessary party* to the declaratory decree suit, and would the decree directing the issuance of a permit to build a drive-in theatre by the County Zoning Director be valid and constitutional?

STATUTE INVOLVED

The statutory provisions involved are Chapter 24592, Laws of Florida, Special Acts of 1947, as amended by Chapter 25889, Laws of Florida, Acts of 1949, and as amended by Chapter 27613, Laws of Florida, Acts 1951; Hillsborough County Zoning Regulations adopted by the Board of County Commissioners of Hillsborough County, Florida, January 3, 1950, as amended July 21, 1950, and as amended August 31, 1951; Section 12 of the Declaration of Rights to the Constitution of the State of Florida; and amendments V and XIV of the Constitution of the United States. They are printed in Appendix A, infra, pp. 25-81.

STATEMENT

The respondent, S. E. Britton, owned a tract of land in Hillsborough County, Florida, which was zoned "A", Agricultural District, under the general zoning regulations of Hillsborough County, Florida. He wished to build and operate a drive-in theatre on the land. The zoning use classification did not permit the building and operation of a drive-in theatre on the land, such a use being confined to zoning use classifications "C-2", Retail Commercial District, and "C-3", Light Industrial District.

Pursuant to the provisions of Chapter 24592, Laws of Florida, Acts of 1947, the respondent, on August 1, 1952, filed a petition with the Board of County Commissioners of Hillsborough County, Florida, requesting that the tract of land described in the petition, which was then zoned as "A", be rezoned to "C-3". (Original plaintiff's Exhibit A-13)

Based upon this petition the County Commissioners prepared and had published in The Tampa Daily Times, a newspaper of general circulation in Hillsborough County, Florida, a notice of a public hearing at 2:00 P.M. on Friday, August 29, 1952. The statute provides that no amendment, supplement or change in the zoning use classification shall become effective until after a public hearing in relationship thereto, at which parties in interest and citizens shall have an opportunity to be heard, and further provides that at least *fifteen days notice* of the time and place of such hearing shall be published in a newspaper of general circulation in such county.

The notice of this public hearing was published in the issues of The Tampa Daily Times of August 14, 21 and 28, 1952, (Original Plaintiff's Exhibit A-13)

The zoning regulations, in Section VII (3) provide that a person petitioning the Board of County Commissioners for a change of zone use classification shall give notice of his intentions, by registered mail, to all of the landowners within the area as set forth in Section 5, Chapter 24592 (No. 978), Senate Bill No. 1015. Registered letters shall carry return cards, which cards must be presented with the petition as evidence of notification. This notice is in addition to the posting of the property by the Zoning Director (Appendix A, p. 79).

Section 5 of Chapter 24592 described the landowners who are to receive a notice by registered mail as "the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred fifty feet therefrom, or of those directly opposite thereto extending one hundred fifty feet from the street frontage of such opposite lots." (Appendix A, p. 29)

The petitioners are landowners who own homes upon lands on the north side and on the east side of the proposed drive-in theater site, and no notice by registered mail was mailed by the petitioner for the zoning use change to any land owner within the description as contained in the statute, including your petitioners.

The record shows that the petition came before the Board of County Commissioners at 2:00 P. M. on Friday, August 29, 1952, *and no person interested or citizen appearing to object or protest against the change in zone*

use classification, the County Commissioners, without any evidence being submitted other than the petition, adopted a resolution changing the zoning use classification from "A" to "C-3". (Original plaintiff's Exhibit A-13)

An examination of the notice of public hearing published in the newspaper and the resolution of the Board of County Commissioners changing the zoning use classification on the land will disclose that the County Commissioners rezoned a parcel of land two hundred feet north and south which abutted on Dale Mabry Highway and one hundred fifty feet east and west, and which tract of land was a part of the drive-in theatre site, without such tract of land being described in the notice published in the newspaper. This fact will be apparent from an examination of the blue print attached to the petition for rehearing filed with the Supreme Court of Florida and shown in Appendix C, p. 103.

A few days after the adoption of this resolution the petitioners learned, for the first time, that the tract of land had been rezoned to permit the respondent to build a drive-in theatre on the land adjoining their homes, and they immediately contacted the Board of County Commissioners and advised the Board that they had received no notice by registered mail, or otherwise, of the proposed change in zoning use classification on respondent's land and called to the attention of the Board of County Commissioners the provisions of Section VII (3) of the zoning regulations, and shortly thereafter filed a petition with the Board of County Commissioners requesting that the land of respondent be rezoned either to "R-1", Single Family Residence use classification, or that it be rezoned back to the original "A" zoning use classification. Upon the petition of

these property owners, and as required by the statute, a legal notice was published in a newspaper of general circulation in Hillsborough County, Florida, to wit: The Tampa Morning Tribune, on October 7, 14, and 21, 1952, advising of a public hearing to be held on the petition at 2:00 P. M. on Thursday, October 23, 1952. Prior to the filing of the petition to rescind the resolution of August 29, 1952, and rezone the land, a notice by registered mail was sent by the petitioners to every land owner as described in Section 5 of the statute, including the original petitioner, S. E. Britton, and the registered return cards were filed with the Board of County Commissioners at the time the petition was filed. (Original plaintiff's exhibits A-12 and A-13).

After legal adjournments of the public hearing on this petition from 2:00 o'clock P. M. on Thursday, October 23, 1952, on November 13, 1952, the Board of County Commissioners adopted a resolution rescinding the resolution of August 29, 1952, and returned the tract of land to its original zoning use classification "A". (Original plaintiff's exhibit A-12 and A-13).

On November 28, 1952, the respondent filed a second petition with the Board of County Commissioners requesting that the tract of land be rezoned from classification "A" to "C-2." Notice of the meeting was properly published and the abutting property owners were notified by registered mail, all in accordance with the statute and the zoning regulations. After public hearing of the evidence in support of the petition and in opposition thereto, the Board at its meeting on January 2, 1953 denied the petition and refused to rezone the property from use classification "A" to "C-2" (Original Plaintiff's Ex. A-12 and A-13.)

The respondent then filed with the Zoning Director of Hillsborough County an application for a permit to build a drive-in theater on the land on the ground of hardship. The permit was denied because the land was located in an improper zoning classification for a drive-in theater. An appeal was taken to the Board of Adjustment of Hillsborough County which denied the appeal on the ground that the respondent was seeking to have the Adjustment Board change the zoning use classication on the land, and that the Board had no jurisdiction to review the action of the Board of County Commissioners.

Thereafter, the respondent filed the instant suit, being a Bill for Declaratory Decree in the Circuit Court of the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County, and alleged in substance the various steps taken by the zoning officials of Hillsborough County with respect to the tract of land, and prayed that the zoning use classification placed on the land be declared unconstitutional and void, and asked for a permit to build a drive-in theater on the land. The Circuit Court decreed that the amendment to the original zoning use classification of August 29, 1952, was adopted *after due notice,* was valid and that none of the subsequent proceedings before the Board of County Commissioners had any legal effect to change the zoning use classification from "C-2" to "A". The Court directed that a permit be issued to respondent.

In this decree the trial judge found that "on November 13, 1952, the said Board reconsidered its Resolution and rescinded its action of August 29, 1952, *without any notice of the meeting being given as provided by the applicable Statute although the plaintiff was notified and present at such meeting.*" (R-217).

Evidently the trial Judge and the Supreme Court of Florida completely overlooked the published notice and the notice given by registered mail in connection with the hearing when the resolution of August 29, 1952, was rescinded and the tract of land returned to the zoning use classification "A". (Original Plaintiff's Ex. A-12).

The answer of the Petitioners, who were Intervenors in the Circuit Court, alleged that the failure to give notice in connection with the public hearing held by the Board of County Commissioners on August 29, 1952, deprived them of due process of law, (Appendix C, p. 95), and that the rescinding resolution of November 13, 1952, was valid in all respects, and that the land by this resolution was rezoned to classification "A".

An appeal to the Supreme Court of Florida was duly taken and errors were specifically assigned as to the denial of Petitioners' constitutional rights to due process of law because of lack of notice of the public hearing in connection with the resolution of August 29, 1952. (Appendix C, p. 96).

The Supreme Court of Florida in its decision affirming the decree of the lower Court held that the rezoning resolution of August 29, 1952, was valid; that the publication of the notice on August 14, 21 and 28, 1952, was sufficient under the provisions of the statute, and that the general zoning regulations requiring notice of the Petitioners' intentions to be given to affected land owners by registered mail, prior to the presentation of the petition to the Board of County Commissioners, was of such a nature that the County Commissioners could waive such regulation, and by the adoption of the rezoning resolution that they did waive such regulation.

The Supreme Court further held that the action of the zoning authorities on November 13, 1952, purporting to rescind the earlier resolution classifying plaintiff's property as "C-2" was illegal and void under the principles of *equitable estoppel.*

The Court further found that although it appeared to the Court that the description of the property in the resolution of August 29, 1952, is different from the description given in the published notice it appears that the latter description (the published notice) includes the former property. A reference to the map attached to the petition for a rehearing (Appendix C, p. 103) will clearly demonstrate the error in this conclusion of the Supreme Court of Florida.

It is clear that the opinion and decision of the Supreme Court of Florida is based squarely on the premise that the rezoning resolution of August 29, 1952, is valid, and on the further premise that the resolution being valid the Court could raise an equitable estoppel against the Board of County Commissioners by reason of the expenditures claimed by the respondent to have been made in preparation for the building of a drive-in theater on the land.

A timely petition for a rehearing was filed with the Supreme Court of Florida assigning as grounds the violation of the rights of the petitioners as protected by Articles V and XIV of the Constitution of the United States, (a) in the holding of the Court that due process of law existed in connection with the published notice of the public hearing at which the rezoning resolution of August 29, 1952, was adopted, and (b) in further holding that the notice by registered mail could be waived and was waived by the Board of County Com-

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missioners, and (c) in further holding that the Board of County Commissioners could change the zoning use classification on other lands than were described in the notice published in the newspaper, and (d) in finally holding that a permit to build a drive-in theater could be issued to the respondent without requiring the respondent to have the site and the inlets and exits of the drive-in theater approved by the Board of Adjustment, as required under the zoning regulations.

This petition for a rehearing was denied without opinion. (R. 256)

REASONS FOR GRANTING THE WRIT

I.

The Supreme Court of Florida has uniformly held that where an act is required to be done within a specified number of days "from" or "after" a given occurence, in computing such period either the day on which the occurence (such as the giving of notice) transpires or the day of performance must be excluded and the other included. The rule usually adopted in such cases has been to exclude the day of giving the notice and include the day of required performance. *Jacksonville Holding Co. v. American Oil Co.,* 136 Fla. 491, 188 So. 809-811.

In the well-reasoned case in the Supreme Court of Connecticut of *National Transport Co., Inc., v. Toquet,* 123 Conn. 468, 196 A.344, it was held that a change in a zoning regulation was invalid where notice of a hearing on the change was not given in compliance with the statute which required at least fifteen days notice. It will be found that the period of time elapsing between the

date of the first publication and the date of the public hearing in the Connecticut case is quite similar to the length of time that the notice was published in the instant case.

Both terminal days must be excluded: *Alderman v. Town of West Haven,* 124 Conn. 391, 200 A. 330.

In *R. I. Home Builders v. Budlong Rose Co.,* 74 A 2d 237, the statute required published notice once each week for three successive weeks prior to the date of the public hearing, the Court held that such a provision of the statute required at least twenty-one days actually to intervene between the first notice and the hearing, and held that the notice of hearing was a condition precedent to the jurisdiction or power of the council to make any valid enactment changing the zoning regulations.

In *Deile et al. v. Boettger,* 250 App. Div. 633, 295 N. Y. S. 115, the Supreme Court of New York held that under a zoning ordinance providing that variance may be granted after public notice and hearing, that public notice means notice of time and place thereof printed in an official newspaper at least five days prior to the time of hearing and that published notice which did not give five days notice was insufficient to give the Board of Appeals jurisdiction to grant a variance.

The Supreme Court of Florida has held that a published notice at least fifteen days prior to the public hearing was required in order to adopt a zoning ordinance. *City of Hollywood v. Rix,* 52 So. 2d. 135. (Fla.)

In *Roman Catholic Archbishop of Boston v. Board, of Appeal of Building Department of the City of Boston,* 167 N. E. 672, it was held that where the Board of Appeals made an order under statutory authority requiring notice of hearing to be advertised in a newspaper for not less than six days previous to date set for public hearing, Board had no power to *waive* compliance with the terms of its order. There appeared to be a statement in the records of the Board of Appeals that the hearing was duly advertised in a newspaper. The Court held that this was a mere conclusion of law and that the statement has no force to overcome the irrefutable dates set forth in the records of the respondent board which show that the advertisement was not in accordance with the order, and hence not of any value as an advertisement.

It is, therefore, clear that under the statute of Florida at least fifteen full and clear days between date of the first publication of the notice and the time of the public hearing is required and failure to publish such notice for the required period of time is jurisdictional and mandatory, and the resolution of August 29, 1952, which did not comply with the statute, in the instant case, is invalid.

II.

Under Section 4 of the statute the power is vested in the Board of County Commissioners to provide for the manner in which zoning regulations and restrictions and boundaries of districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, and Section VII (3) of the zoning regulations was adopted after a public hearing and after public notice, as required by the statute. It is, therefore,

beyond the power of the Board of County Commissioners to waive the zoning regulations in connection with any public hearing on a petition to amend, supplement or change the zoning use classification. The only method by which the regulation can be changed is through the procedure provided by the statute, which involves public hearing and public notice.

Any decision that holds that the Board of County Commissioners may waive the zoning regulation requiring that notice be mailed by the petitioner to affected landowners would completely destroy the uniformity of treatment of all landowners under the exercise of the police power in connection with zoning regulations, would completely ignore the interest of the public in connection with amending, supplementing or changing such regulations, and would permit the Board of County Commissioners at their own volition to change zoning use classifications on land for the benefit of political friends or other persons that they wished to favor to the detriment of the landowners abutting on the land so rezoned, and whose property is depreciated in value and vitally affected by any such change in zoning use classification.

In *Tonroy v. City of Lubbock,* 242 S. W. 2d 816, the statute required a written notice of all public hearings on proposed changes in zoning classifications shall be sent to all owners of property, or to the person rendering the same for city taxes, affected by such proposed change of classifications; and to all owners of property or to the persons rendering the same for city taxes, located within two hundred feet of any property affected thereby, within not less than ten days before such hearing is held. The written notices were nct sent as

required by the statute and it was held that such notice was essential as a matter of law to the exercise of jurisdiction.

It is within the power of the Board of County Commissioners to prescribe additional safeguards insuring that affected property owners and the public shall receive notice. In the case of *Sirota v. Kay Homes,* 208 Ga. 113, 65 S. E. 2d 597, the City of Atlanta required public notice of hearing on petitions to amend the zoning ordinance by the petitioner placing a placard on the property twelve feet square. The placard actually placed on the property was only twelve square feet, as provided in the ordinance before it was amended, and the Supreme Court of Georgia held that such notice was insufficient and that the provisions of the code, requiring a placard twelve feet square, had to be complied with before a valid rezoning ordinance could be passed.

In connection with the power to waive a provision for notice of a public hearing prescribed by ordinance see *Roman Catholic Archbishop of Boston v. Board of Appeal of Building Department of the City of Boston,* supra; *Makrauer v. Board of Adjustment,* 193 P. 2d 291, 294; *Cain v. Lyddon,* 343 Ill. 217, 175 N. E. 391, 393.

The County of Hillsborough is an agency of the State of Florida and a constituent part of the State of Florida. The doctrine of estoppel is not applied to the extent of impairing sovereign powers of a state such as it assumes, for example, in the enactment and enforcement of police measures. *Sanitary Dist. v. United States,* 266 U. S. 405.

There can be no waiver or estoppel against the petitioners because both waiver and estoppel are based on a party with full knowledge of the facts taking a position

and allowing another party to expend money and then the first party taking an inconsistent position to the detriment of the other party. In connection with waiver there must be some valuable consideration between the parties. The Board of County Commissioners conclusively showed by their actions in rescinding the resolution after lack of notice was called to their attention that even if they could waive the requirement that they would not have waived the requirement had they known that the zoning regulations had not been complied with. The petitioners are innocent landowners abutting on the drive-in theater site who had no knowledge of the rezoning resolution and, therefore, any waiver or estoppel that might legally be raised as against the Board of County Commissioners cannot be raised against these landowners.

The landowners have the right to notice of the zoning change; it is a substantial right of the various individual adjoining landowners and the notice required to be given is for their benefit. The public authorities have no authority to waive these private rights without the consent of the adjoining landowners.

III.

The transcript of testimony taken before the Board of County Commissioners and introduced in evidence in the declaratory decree suit was inadmissible because the rule is well settled that if the witness is available what he testified to in another case will not be substituted for oral evidence. *McDougald v. Imler,* 153 Fla. 619, 15 So. 2d 418; *Abbe v. Abbe,* 68 So. 2d 565 (Fla.). As to the status and validity of the transcript of testimony that was offered in evidence in the instant case, see *McGee v. Cohen,* 57 So. 2d 658. (Fla.).

IV.

The land involved in the suit was, under the terms and provisions of Chapter 29548, Laws of Florida, Acts 1953, (the Annexation Law), incorporated into the City of Tampa during the pendency of the suit in the trial court. Section 12 of the Act granted full authority to the City of Tampa in connection with zoning matters under the provisions of Chapter 176, Florida Statutes 1951, notwithstanding Chapter 24592, Special Acts 1947. This act, in providing for pending suits in connection with zoning matters in Section (e), granted the right to the appropriate officer, department, board or bureau of the City of Tampa, upon the filing of written application therefor and the giving of reasonable notice to the other parties, to be made a party to any such proceedings, either in place of or in addition to the corresponding county officer, department, board or bureau who is a party to such proceedings, as the Court may direct.

In a later act adopted at the same session of the legislature, Chapter 29131, Laws of Florida, Acts 1953, the power granted to the City of Tampa under this law was construed by the legislature and it was provided that within the limits of the City of Tampa, as extended by the Annexation Law, neither the County Zoning Director, Board of County Commissioners, County Adjustment Board, nor any other officer or board of said county, shall have any further jurisdiction after the effective date of the Annexation Law to hear or act upon any applications, petitions or appeals filed under said Chapter 24592, as amended, or any other zoning law applicable thereto with reference to any property in said City, the legislature finding that the Annexation Law vested such jurisdiction and power in the corresponding officials and

boards of the City of Tampa and made applicable thereto the procedure set forth in Chapter 176, Florida Statutes 1951.

The question of the City of Tampa being a necessary party to the suit in the trial court was specifically raised as a defense in the answer of the zoning authorities. (R. 33.) The question was argued before the trial court, was assigned as error in the appeal to the Supreme Court of Florida, and was in the briefs of appellants and orally argued before the Supreme Court of Florida. The City of Tampa was not made a party defendant to the suit, and both the trial court and the Supreme Court of Florida ignored any interest that the City of Tampa might have in the litigation.

The final decree of the trial court directed the Zoning Director of Hillsborough County to issue a permit to the respondent. It is our position that the City of Tampa was a necessary party defendant to the suit on and after the date of the adoption of the Annexation Law and that the Court was without power, jurisdiction and authority, in the absence of the City of Tampa as a party defendant, to make a final decree requiring a permit to build a drive-in theatre to be issued to the respondent.

Because of the land being annexed to the City of Tampa and jurisdiction over all zoning matters becoming vested in the zoning authorities of the City of Tampa, the Zoning Director of Hillsborough County is powerless to issue the permit, and the final decree is not binding in its terms on the City of Tampa.

CONCLUSION

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

MORRIS E. WHITE

Citizens Building
Tampa, Florida

WILLIAM E. THOMPSON

Counsel for Petitioners

APPENDIX A

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U. S. C. 1946 ed P. XLII.

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U. S. C. 1946 ed P. XLIII.

CONSTITUTION OF THE STATE OF FLORIDA

DECLARATION OF RIGHTS

Sec. 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken without just compensation. Florida Statutes 1951, Vol. 1, P. 4.

LAWS OF FLORIDA, 1947—SPECIAL ACTS

CHAPTER 24592—(No. 978)

SENATE BILL NO. 1015

AN ACT to Empower the Board of County Commissioners of Hillsborough County to Regulate and Restrict Within Territory in Said County, Not Included in Any Municipality, the Height, Number of Stories and Size of Buildings and Other Structures on Land and Water, the Percentage of Lot That May Be Occupied, the Size of Yards, Courts and Other Open Spaces, the Density of Population, the Use of Land for Junk Yards and Automobile Trailer Camps, and the Location and Use of Buildings, Structures and Land for Trade Industry, Residence or Other Specific Use of the Premises; Providing for the Division of Such County Into Districts and Within Such Districts to Regulate and Restrict the Erection and Construction, Alteration, Repair or Use of Buildings; Providing for Method of Procedure; Providing for the Appointment of a Zoning Commission and A Board of Adjustment; Providing for Remedies and Penalties for Violation of This

Act or of Any Order or Resolution Made Under Authority Conferred Hereby and Conferring Upon the County Commissioners the Power to Prescribe and Enforce Regulations to Effectuate the Purpose of This Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. GRANT OF POWER. For the purpose of promoting health, safety, morals or the general welfare of the community the Board of County Commissioners of Hillsborough County is hereby empowered within territory in such county within a radius of three (3) miles outside the corporate limits of the City of Tampa and one mile outside of any other municipality as the same exist on the effective date of this Act, but not included in any municipality, to regulate and restrict the height, number of stories and size of buildings and other structures on land and water, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, the use of land for junk yards and automobile trailer camps, and the location and use of buildings, structures and lands for trade, industry or other specific use.

Section 2. DISTRICTS. For any and all of said purposes the Board of County Commissioners of such county may divide such territory within a radius of three (3) miles outside the corporate limits of any municipality as the same exist on the effective date of this Act, but not included in any municipality, into districts of such number, shape and area as may be deemed best suited to carry out the purpose of this Act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings and structure, on land and water.

All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

Section 3. PURPOSES IN VIEW. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the highways; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land and water; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks and other requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land and water throughout any such county.

Section 4. METHOD OF PROCEDURE. The Board of County Commissioners of such county shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days notice of the time and place of such hearing shall be published in a paper of general circulation in such county.

Section 5. CHANGES. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred fifty feet therefrom, or of those directly opposite thereto, extending one hundred fifty feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fifths of all of the members of the Board of County Commissioners of such county. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

Section 6. ZONING COMMISSION. In order to avail itself of the powers conferred by this Act, the Board of County Commissioners of such county shall appoint a commission to be composed of not less than five members, to be known as the Zoning Commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such Board of County Commissioners shall not hold its public hearings or take action until it has received the final report of such commission, in any such county having a County Planning Council the majority of the members of the Zoning Commission shall be appointed from such Council. The members of such Zoning Commission shall serve without compensation.

Section 7. BOARD OF ADJUSTMENT. Whenever the Board of County Commissioners of such county shall have determined to exercise the powers conferred by

this act it shall notify the Governor of such determination, and it shall thereupon be the duty of the Governor to appoint a County Board of Adjustment for any such county, and it shall be the duty of said Board of Adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of any order or resolution in harmony with the general purpose and intent, and in accordance with general or specific rules therein contained. The members of such Board shall serve without compensation.

Such Board of Adjustment shall consist of five members, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

Such Board of Adjustment shall adopt rules in accordance with the provisions of any order or resolution adopted pursuant to this Act. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Such Chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediatey filed in the office of the Board of County Commissioners of such county and shall be a public record.

Appeals to the Board of Adjustment may be taken by any person aggrieved, or by any officer, department, board, or bureau of the county affected by any decision of the administrative offices. Such appeal shall be taken within a reasonable time as provided by the rules of the Board, by filing with the officer or Board from which the appeal is taken and with the Board of Adjustment a notice of appeal, specifying the grounds thereof. The officer or Board from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer or Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

THE BOARD OF ADJUSTMENT SHALL HAVE THE FOLLOWING POWERS:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by any administrative official

in the enforcement of this Act or by any order or resolution adopted pursuant thereto.

(2) To hear and decide special exceptions to the terms of the order or resolution upon which such Board is required to pass under such order or resolution.

(3) To authorize upon appeal in specific cases such variance from the terms of the order or resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the order or resolution will result in unnecessary hardship, and so that the spirit of the order or resolution shall be observed and substantial justice done.

In exercising the above mentioned powers such Board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or may modify the order, resolution, requirement, decision or determination appealed from and may make such order, resolution, requirement, decision or determination as ought to be made, and to that end shall have the powers of the officer or Board from whom the appeal is taken.

The concurring vote of three members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or Board, or to decide in favor of, the applicant on any matter upon which it is required to pass under any such order or resolution or to effect any variation in such order or resolution.

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer or any officer, department, board or

bureau of such county may, within thirty days after the filing of any decision in the office of the Board of Adjustment, but not thereafter, apply to the courts for relief.

Section 8. ADMINISTRATION. The Board of County Commissioners of such county is hereby authorized and empowered to designate the County Engineer, or such other employee of said Board as such Board may determine, to enforce the provisions of this Act and any order or resolution made under authority hereof.

Section 9. REMEDIES. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure on land or water is used in violation of this act or of any order or resolution or other regulation made under authority conferred hereby, the proper local authorities, of any such county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation to prevent the occupancy of said building, structure on land or water or to prevent any illegal act, conduct, business or use in or about such premises.

Section 10. SAVING CLAUSE. If any section, part of section, paragraph or clause of this Act shall be held to be unconstitutional or void, the remaining provisions of this Act shall nevertheless remain in full force and effect.

Section 11. The Board of County Commissioners of such county is hereby authorized to appropriate and pay out of the General Fund of such county annually,

a sum not to exceed $10,000.00 for the purpose of defraying the expense of zoning such county and administering the provisions of this Act.

Section 12. PENALTIES. Any person, firm, partnership or corporation violating any of the provisions of this Act or who shall fail to abide by and obey all orders and resolutions promulgated as herein provided for shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding $500.00 or by imprisonment not to exceed thirty days, or by both such fine and imprisonment.

Section 12A. Nothing contained in this Act shall deprive this session of the Legislature from passing a special act or acts providing for zoning regulations within certain described limited area, embraced within the areas covered by this Act, and in the event any such special act or acts become law, the provisions thereof shall supersede the provisions of this act to the extent of the area or areas defined in such special act or acts, and such defined area shall be exempt from any zoning control or authority set up by this act.

Section 13. This Act shall take effect upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 16, 1947.

CHAPTER 25889—(No. 893)

SENATE BILL NO. 990

AN ACT Relating to Zoning in Hillsborough County, Florida; Amending Sections 1, 2, 8 and 11 of Chapter 24592, Laws of Florida, Acts of 1947; and Empowering the Board of County Commissioners to Provide Zoning Regulations, and to Regulate and Restrict within Specified Territory in Said County, the Height, Number of Stores, Location, Use and Size of Buildings and Other Structures on Land and Water the Percentage of Lot that May be Occupied, the Size of Yards, Courts and Other Open Spaces, the Density of Population, the Use of Land for Junk Yards and Automobile Trailer Camps; to Employ a Zoning Director, Deputy Zoning Directors and Other Personnel and Pay Their Salaries; to Issue Building and Use Permits and to Establish and Collect Fees for the Issuance of Such Permits; to Appropriate and Expend Funds for the Administering of the Provisions of the Zoning Regulations and Laws of Such County; Providing for Certain Appeals and for Applications to Courts for Relief.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That Section 1 of Chapter 24592, Laws of Florida, Acts of 1947, be and the same is hereby amended so as to read as follows:

"Section 1. Grant of Power. For the purpose of promoting health, safety, morals or the general welfare of the community, the Board of County Commis-

sioners of Hillsborough County is hereby empowered within the territory in such county outside the corporate limits of the City of Tampa having a radius or boundary lines as follows, to-wit:

Beginning at the intersection of the West right-of-way line of the Atlantic Coast Line Railroad and the South boundary of the N¼ of Section 34 T 29 S, R 19 E, run thence East to the SE corner of the NW¼ of NW¼ of Section 31, T 29 S, R 20 E, thence North to the NE corner of SW¼ of SW¼ of Section 18, T 29 S, R 20 E, thence West to the NW corner of the SW¼ of SW¼ of Section 18, T 29 S, R 20 E, thence North to the NE corner of SE¼ of SE¼ of Section 12, T 29 S, R 19 E, thence West to NW corner of SW¼ of SW¼ of Section 12, T 29 S, R 19 E, thence North to NE corner of SE¼ of SE¼ of SE¼ of Section 35, T 28 S, R 19 E, thence West to a point 200 feet East of NW corner of SW¼ of SW¼ of SE¼ of Section 34, T 28 S, R 19 E, thence North parallel with and 200 feet East of the center line of 56th Street to a point 200 feet East of the NW corner of the SW¼ of SW¼ of NE¼ of Section 22, T 28 S, R 19 E, thence West to the NW corner of SW¼ of SW¼ of NE¼ of Section 20, T 28 S, R 18 E, thence North to the center of Section 17, T 28 S, R 18 E, thence West to the center of Section 18, T 28 S, R 18 E, thence North to a point 200 feet North of SW corner of SE¼ of Section 6, T 28 S, R 19 E, thence West to a point 200 feet North of the SW corner of Section 2, T 28 S, R 18 E, thence South to the NE corner of SE¼ of SE¼ of Section 10, T 28 S, R 18 E, thence West to the NW corner of SW¼ of SE¼ of Section 9, T 28 S, R 18 E, thence South to the SW corner of SE¼ of Section 28, T 28 S, R 18 E, thence West to the NW corner of Section 33, T 28 S, R 18 E, thence South to the NE corner of SE¼ of SE¼ of Section 32, T 28 S, R 18 E, thence

West to the NW corner of the SW¼ of SE¼ of Section 31, T 28 S, R 18 E, thence South to the NW corner of SW¼ of SW¼ of SE¼ of Section 7, T 29 S, R 18 E, thence West to a point 500 feet westerly of the mean low water line of Old Tampa Bay, thence southerly on a line parallel with and 500 feet westerly of the mean low water line of Old Tampa Bay to an intersection with the South boundary of the N½ of Section 17, T 30 S, R 18 E, thence East to the NE corner of SE¼ of Section 17, T 30 S, R 18 E, thence South to the SW corner of Section 16, T 30 S, R 18 E, thence East along the North boundary line of MacDill Field to the mean low water line of Hillsboro Bay, thence Northeasterly to the point of intersection of the South boundary of Section 4, T 30 S, R 19 E, and the mean low water line of Hillsboro Bay, thence East along section line to the westerly right-of-way line of the Atlantic Coast Line Railroad, thence North along said railroad right-of-way to the P.O.B.

Together with the territory in such county within a radius of one mile outside the corporate limits of any other municipality as the same exist on the effective date of this Act, but not included in any municipality, to regulate and restrict the height, number of stories and size of building and other structures on land and water, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, the use of land for junk yards and automobile trailer camps, and the location and use of buildings, structures and lands for trade, industry or other specific use.

Section 2. That Section 2 of Chapter 24592, Laws of Florida, Acts of 1947 be and the same is hereby amended so as to read as follows:

"Section 2. Districts. For any and all of said purposes the Board of County Commissioners of such County may divide such Territory as is set forth in this act as subject to zoning regulations into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this Act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings and structures, on land and water. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts."

Section 3. That Section 8 of Chapter 24592, Laws of Florida, Acts of 1947 be and the same is hereby amended so as to read as follows:

"Section 8. Administration. The Board of County Commissioners of such county is hereby authorized and empowered to employ a Zoning Director, Deputy Zoning Directors, Inspectors and Employees for the administering and enforcement of the Zoning Regulations and Laws of said county and/or any order or resolution made under the authority thereof. The Board may designate or appoint the County Engineer or any other employee of said Board to such position or positions aforesaid."

Section 4. That Section 11 of Chapter 24592, Laws of Florida, Acts of 1947, be and the same is hereby amended so as to read as follows:

"Section 11. The Board of County Commissioners of such County is hereby authorized to appropriate and pay out of the General Fund of such County, annually, a sum not to exceed $35,000.00 for the purpose of de-

fraying the expense of zoning such county and administering the provisions of the zoning regulations and acts."

Section 5. The Board of County Commissioners, in addition to the powers and duties heretofore granted to it and which are not in conflict herewith, is hereby granted the following additional powers in furtherance of and in connection with the Zoning Regulations authorized in said County:

(a) To employ and fix and pay the salaries, expenses and other compensation of the Zoning Director, Deputy Zoning Directors, Inspectors, attorneys and other employees.

(b) To issue building, use and other permits deemed necessary in furtherance of the provisions of all zoning regulations and laws.

(c) To establish, charge and collect from time to time reasonable fees in varying amounts for any permits issued or required under any and all zoning regulations.

Section 6. Any appeal taken from the decision of the Zoning Director or Deputy Zoning Director shall be in the same manner as provided in Chapter 24592, Laws of Florida, 1947. Application to the courts for relief shall be as provided in said Chapter 24592 and acts amendatory thereto.

Section 7. That no building shall be erected or structure placed within thirty (30') feet of the front lot line of any property fronting or abutting on the following described and designated streets, highways and roads in Hillsborough County, Florida, to-wit:

Florida Avenue—State Road No. 685.

Nebraska Avenue—State Road No. 45.

Hillsborough Avenue—State Roads No. 580 and 600.

7th Avenue—State Roads Nos. 60 and 574.

Columbus Drive—State Roads Nos. 60 and 589.

Memorial Highway—State Road No. 60.

Gandy Boulevard West of Dale Mabry—State Road No. 600.

Gandy Boulevard East of Dale Mabry.

Dale Mabry Highway—State Roads Nos. 600 and 685.

MacDill Avenue—

Cypress Street running East and West of Dale Mabry Highway.

Said set-back line may be waived or modified by the Board of Adjustment upon application being made as in other cases under Section 7, Chapter 24592, Laws of Florida, Special Acts 1947.

Section 8. If any word, phrase, clause, sentence, paragraph or any other portion of this Act should be declared unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair any of the remaining provisions of this Act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional portion or portions not been included therein.

Section 9. Section 11 of Chapter 24952, Laws of Florida, Acts of 1947, and all other laws and parts of laws in conflict hereto are hereby repealed.

Section 10. This Act is to take effect upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 13, 1949.

LAWS OF FLORIDA, 1951—SPECIAL ACTS

CHAPTER 27613—(No. 1134)

HOUSE BILL NO. 1672

AN ACT Relating to Zoning in Hillsborough County, Florida, Amending Section 3 of Chapter 24592, Laws of Florida, Acts of 1947, to Provide for Including in Zoning Regulations Provisions Requiring All Structures Permitted to be in Reasonable Keeping with General Type, Character, and Cost of Structures Within the Particular Area Involved.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That Section 3 of Chapter 24592, Laws of Florida, Acts of 1947, be and the same is hereby amended to read as follows:

"Section 3. PURPOSES IN VIEW. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the highways; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of

land and water; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks and other requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with reasonable consideration to the character and types of buildings in any particular locality to the end that all structures permitted shall be in reasonable keeping with the general type, character, and cost of structures within the particular area involved, and with a view to conserving the value of buildings and encouraging the most appropriate use of land and water throughout any such county."

Section 2. All laws and parts of laws in conflict herewith are hereby repealed.

Section 3. This Act shall become effective immediately upon its becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 11, 1951.

ZONING REGULATIONS

FOR

HILLSBOROUGH COUNTY, FLORIDA

A Resolution adopted by the Board of County Commissioners of Hillsborough County, Florida, at their regular meeting, January 3, 1950, effective at midnight on January 3, 1950, to regulate and restrict within a certain specified territory of Hillsborough County not included within any incorporated municipality, the height, number of stories, the location, use and size of buildings and other structures on land and water, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and for such purposes to divide the certain specified territory of Hillsborough County into districts and within such districts to regulate and restrict the erection, construction, alteration, repair and use of buildings, structures on land and water, to provide a method of procedure; to provide for the administration of said regulations; to provide a method for amendment, supplement, change and modification and repeal of regulations and boundaries; to provide a Board of Adjustment and prescribe its powers and duties and to prescribe penalties for the violation of its provisions and also provide for its enforcement.

PURPOSE AND ENACTING CLAUSE:

WHEREAS, by provision of Chapter 24592, Laws of Florida, Special Acts of 1947 and the amendment thereto, Chapter 25889, Laws of Florida, Acts of 1949, authority is conferred on the Board of County Commissioners of Hillsborough County to establish districts within certain prescribed territory of said County and

within such districts is empowered to regulate and restrict the erection, construction, reconstruction, alteration and repair of buildings on land and water and the uses of land, buildings and structures for commerce, industry, residence or other specific uses, to regulate and restrict the height, number of stories and size of buildings and other structures on land and water, the percentage of lot that may be occupied, the size of yards, courts and other open spaces and the density of population, all for the purpose of promoting health, safety, morals or the general welfare of the community, and

WHEREAS, the Board of County Commissioners of Hillsborough County deem it necessary in order to lessen congestion on the highways, to secure safety from fire, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land and water; to avoid undue concentration of population, to preserve and facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other requirements, to make and promulgate such regulations with reasonable consideration, among other things, of the character of each district and its peculiar suitability for particular uses and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the specifically described area of said County in accordance with a comprehensive plan; and

WHEREAS, a public hearing was held on the 20th day of December, A. D. 1949 pursuant to the provisions of the statute and after due and legal advertisement, to consider the zoning plan and its accompanying regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA:

SECTION 1. DEFINITIONS.

For the purpose of these Regulations and enforcement thereof, the following definitions for terms used shall apply to all districts. Words used in the present tense include the future; words in the singular number include the plural and words in the plural number include the singular; the word "building" includes the word "structure" and the word "shall" is mandatory and not directory.

ACCESSORY USE OF BUILDING. A subordinate use of building customarily incident to and located upon the same lot occupied by the main use or building.

ALLEY. A roadway dedicated to public use which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

ADVERTISING STRUCTURE. Any structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any outdoor advertising sign may be placed.

APARTMENT BUILDING. See Dwelling, Multiple.

AUTO COURT OR AUTO CAMP. See Tourist Camp.

BARBECUE STANDS, BARBECUE PITS, OR PIG STANDS. Refreshment places where space is provided or allowance is made for automobiles to congregate for the purpose of serving occupants with refreshments.

BUILDING. Any structure having a roof supported by columns or walls.

BUILDING, HEIGHT OF. The vertical distance measured from the finished grade level to the mean level of the slope of the main roof. The height of a wall is the vertical distance from the finished grade to the mean level on the top of the wall, including any dormers or gables on the wall.

BUNGALOW COURTS (HOUSE COURTS, GARDEN APARTMENTS). Two or more buildings used or intended for use as dwellings occupying a single parcel of land, any portion of which is used or intended for use in common by the inhabitants of such dwellings.

COURT. A court is a required open, unoccupied space on the same lot, and fully enclosed on at least three adjacent sides by walls of the building. An outer court is any court facing for its full required width on a street or on any other required open space not a court. An inner court is any other required court.

DWELLING, SINGLE FAMILY. A detached building, designed for, or occupied exclusively by, one family.

DWELLING, TWO FAMILY (DUPLEX). A detached building designed for or occupied exclusively by, two families living independently of each other.

DWELLING, MULTIPLE. A building or portion thereof used or designed as a residence for three or more families living independently of each other.

FAMILY. Any number of individuals living together as a single housekeeping unit and doing their cooking on the premises.

FILLING STATION. See Service Station.

FRONTAGE. All the property abutting on one (1) side of a street between two (2) intersection streets, measured along the street line.

GARAGE, PRIVATE. A building or space used as an accessory to a main building permitted in any residence district, and providing for the storage of motor vehicles and in which no business occupation or service for profit is in any way conducted.

GARAGE, PUBLIC. Any building or premises, except those described as a private or storage garage, used for the storage or care of motor vehicles, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

GARAGE, STORAGE. Any building or premises, other than a private or public garage, used exclusively for the parking or storage of motor vehicles.

GUEST HOUSE (TOURIST HOME). Any dwelling in which rooms are rented for the temporary care or lodging of transients and travelers for compensation.

HOME OCCUPATION. An occupation for gain or support conducted solely by immediate members of a family residing in a dwelling and conducted entirely within the dwelling, provided no article is sold or offered for sale except as may be produced on the premises by members of the family and provided further that such home occupation shall be incidental to the residential use of the premises. Home occupations shall include, in general, personal services such as are furnished by a physician, dentist, musician, artist, beauty operator or seamstress when performed by the person occupying

the building as his or her private dwelling and not including the employment of any additional persons in the performance of such services.

LODGING (ROOMING) HOUSE. Any house, or other structure, or any place or location, kept, used, maintained, advertised or held out to the public to be a place where living quarters, sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

LOT. A parcel of ground which is or may be occupied by a building and accessory building or buildings; including the open spaces required under this Resolution. For the purpose of this Resolution, the word "lot" shall be taken to mean any number of contiguous lots or portions thereof, as shown on the map of record, upon which one or more main structures for a single use are to be erected.

LOT, CORNER. A lot abutting upon two (2) or more streets at their intersections.

LOT OF RECORD. A lot which is a part of a subdivision, the plat of which has been recorded in the office of the Clerk of the Circuit Court of Hillsborough County.

LOT, DEPTH. The depth of a lot, for the purpose of this Resolution, is the distance measured in the mean direction of the side lines of the lot from the midpoint of the front lot line to the midpoint of the opposite main rear line of the lot.

LOT, INTERIOR. A lot other than a corner lot.

LOT, THROUGH. An interior lot having frontage two streets.

NON-COMFORMING USE. A building or land oc-pied by a use that does not conform with the regula-ns of the use district in which it is situated.

PARKING LOT. An area or plot of ground used the storage or parking of motor vehicles.

SERVICE STATION. A building or a lot where soline, oil and greases are supplied and dispensed to motor vehicle trade; also where battery recharging, e repair and other similar services are rendered.

STABLE, PRIVATE. A stable with a capacity of more than one (1) for each thirty-five hundred 500) square feet of lot area whereon such stable is ated and where such horses are owned by the owners occupants of the premises and are not kept for re-neration, hire or sale.

STABLE, PUBLIC. A stable, other than a private ble.

STORY. Any portion of a building included be-een the finished ceiling next above it or the finished der surface of the roof directly over that particular or.

STREET. A public or private thoroughfare which fords the principal means of access to abutting prop-y, including avenue, place, way, drive, land, boule-rd, highway, road and any other thoroughfares except alley.

STREET LINE. The line between the street and utting property.

STRUCTURE. Anything constructed or erected, the use of which requires more or less permanent location on the land or attachment to something having a permanent location on the land.

STRUCTURAL ALTERATIONS. Any change, except for repair or replacement in the supporting members of a building, such as bearing walls, columns, beams or girders.

TOURIST CAMP (CABIN COURT). Any group of dwellings which is designed or intended for the temporary residence of motorists or transients. This term shall include "Cabin Camps," "Auto Courts", "Auto Camps", and "Motor Camps".

USED CAR LOT. A lot or group of contiguous lots, used for the display and sales of used automobiles where no repair work is done except the necessary reconditioning of the cars to be displayed and sold on the premises.

USED CAR JUNK YARD. A lot or group of contiguous lots used for the dismantling or wrecking of used automobiles or the storage, sale or dumping of dismantled or wrecked cars or their parts.

YARD. An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by tree or shrubbery or as otherwise provided herein.

YARD, FRONT. A yard across the full width of the lot extending from the front line of the building to the front line of the lot, excluding steps and unenclosed porches.

YARD, SIDE. An open unoccupied space on the same lot with a building between the building and the side line of the lot extending through from the front building line to the rear yard or to the rear line of the lot, where no rear yard is required.

YARD, REAR. A yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

SECTION II. DISTRICT AND BOUNDARIES.

In order to regulate and restrict the height and size of buildings; to regulate and restrict the intensity of land use; to regulate the area of yards, courts and other open space about buildings; to classify, regulate and restrict the location of commerce and industries and the location of buildings designed for specified industrial, commercial, residential, and other uses, the unincorporated area of Hillsborough County specifically described in Laws of Florida, Chapter 25889, Acts of 1949, is hereby divided into districts of which there shall be eight (8) as follows:

A —Agricultural District.

R-1—Single Family Residential District.

R-2—One and Two Family Residential District.

R-3—Multiple Family Residential District.

C-1—Neighborhood Commercial District.

C-2—Retail Commercial District.

C-3—Commercial—Light Industrial District.

M-1—Industrial District.

The boundaries of the said districts are hereby established as shown in the zoning atlas, consisting of 355 sectional maps and an index map, which are identified by sheet numbers on the lower right hand corner margin, and authenticated by the signature of the Chairman of the Board of County Commissioners of Hillsborough County. The originals of these maps are on file in the office of the County Engineer of Hillsborough County. Each of the 355 sectional maps, and the index map is hereby adopted and made a part of this Resolution, and said maps and all notations, references and other information shown thereon shall be as much a part of this Resolution as if the matter and information set forth by said maps were fully described herein.

The boundaries of the various districts as shown upon the map and the sectional atlas sheets shall be determined by use of the scale shown on said sheets, unless actual dimensions are noted. Scale and field measurements and map dimensions shall be figured from the center line of streets, highways, alleys and railroad rights of way unless otherwise indicated. Where uncertainty exists as to the exact location of said boundaries the following rules shall apply:

(a) Where the district boundaries lie on or within streets, highways, roads, alleys or railroad rights of way, the district boundaries shall be the center line of such streets, highways, roads, alleys or railroad right of way.

(b) Where district boundary lines approximately bisect blocks the boundaries are the median line of such blocks, between the center lines of boundary streets.

(c) Where District boundaries are approximately parallel to a street, highway, road, alley, or railroad right of way, the distance of such boundaries from the property line of such street, highway, road, alley, or railroad right of way, shall be, unless otherwise shown by dimensions, one lot depth on lots facing said street, highway, road, alley, or railroad right of way, or approximately one hundred fifty (150) feet on acreage and tracks, or on parallel lots, to the nearest lot line between lots to conform to adjacent district lines.

(d) Where a district boundary line divides a lot into two zoned districts, the entire lot or tract shall be given the zone classification of its largest part.

(e) In cases of final uncertainty the Board of Adjustment shall interpret the zoning map to fix the exact location of boundaries.

No building or structure shall be erected, reconstructed or structurally altered, nor shall any building, land or water be used for any purpose other than a use permitted in the District in which such building, land or water is located. No building or land shall be used so as to produce greater heights, smaller yards or less unoccupied area and no building shall be occupied by more families than hereinafter prescribed for such building for the District in which it is located. No lot which is now or may be hereafter built upon as herein required, shall be so reduced in area that the yards and open spaces will be smaller than prescribed by the Resolution, and no yard, court, or open space provided about any building for the purpose of complying with the provisions hereof shall be used as a yard, court or other open space for any other building.

SECTION III. "A" AGRICULTURAL DISTRICT.

A. Uses Permitted.

1. One and two family dwellings.

2. Agriculture, horticulture, and general farming, including dairying, pasturage, forestry, livestock and poultry raising including stables, nurseries, green-houses, truck gardening and similar enterprises and uses, home occupations.

3. Airports and landing fields.

4. Churches, schools, colleges, hospitals, sanitariums and clinics.

5. Country clubs, golf courses, athletic fields, parks, play grounds except commercial driving tees or ranges.

6. Cemeteries following site approval by Health Authorities and Board of Adjustment.

7. Public works and public utility facilities such as water pumping plants and reservoirs, electric transmission lines and sub-stations, broadcasting towers and transmission stations.

8. Sawmills and planing mills, turpentine stills and other operations utilizing the natural resources of the region, provided however, that no such operation shall be established or conducted within 200 feet of the nearest highway right of way.

9. Non-commercial boat piers, slips or boat houses for docking of private water craft, except house boats.

10. Public structures, owned and operated by the City of Tampa, Hillsborough County, State of Florida, or the United States of America, and used for public purposes.

11. Accessory buildings and uses customarily incident to any of the above uses when located on the same lot or tract and not used or operated commercially or industrially, provided however, that no such buildings shall be erected or located within 200 feet of the nearest highway right of way line.

12. Guest houses for the accommodation of transients when located in private residences provided such guest houses shall provide adequate facilities for off-street parking. (See Section XII.)

13. Roadside stands of a temporary nature for the sale of fruit, vegetables and other products produced on the premises.

14. Advertising structures, signs.

B. Required Lot Area, Width, Front, Side and Rear Yards and Building Height Limit.

Lots or building sites for residential structures in an Agricultural District shall have an area of not less than 5000 square feet with a minimum width of 50 feet measured along the front property line. The maximum height of building or structure shall not exceed 2½ stories or 35 feet and not more than 30 percent of the lot area shall be occupied by structures or buildings.

There shall be a front yard of not less than 25 feet except as hereinafter specified along certain State and County highways. There shall be a side yard on each side of the main building of not less than ten (10) percent of the width of the lot, provided however that such side yard need not exceed 7½ feet but shall not be less than 5 feet. A rear yard of not less than 25 percent of the total lot area shall be provided, and, unless the plumbing system on such land is connected to a sanitary sewer other than a septic tank with field drains, sufficient rear lot area is required to care for a septic tank drain field, shall not be occupied by any accessory buildings or other structures and shall have sufficient area of open lot for each lineal foot of septic tank drain tile, as required by the State Board of Health and passing the inspection of the Hillsborough County Plumbing Inspector.

C. Special Requirements.

In tracts of land hereafter subdivided into lots and streets, said lots shall have an area of not less than 6000 square feet with a minimum width of 60 feet measured along the front property line. Street widths, from property line to property line, must be at least 60 feet unless otherwise approved by the Board of County Commissioners, but in no case shall such street widths be less than 50 feet.

All subdivision plats shall be approved by the County Engineer before presentation to the Board of County Commissioners to ascertain if the provisions of lot areas, dimensions and street widths conform to the minimum standard published herein.

No building, structure or portion thereof shall be erected within 30 feet of the front line of any property

fronting or abutting on the following described or designated streets, highways and roads, to-wit:

Florida Avenue—State Road 685

Nebraska Avenue—State Road 45

Hillsborough Avenue—State Road 580 and 600

Seventh Avenue—State Road 60 and 574

Columbus Drive—State Road 60 and 589

Memorial Highway—State Road 60

Gandy Boulevard, west of Dale Mabry—State Road 600

Dale Mabry Highway—State Road 600 and 685

MacDill Avenue—

Said set-back line may be waived or modified by the Board of Adujustment upon application being made as in other cases under Section 7, Chapter 24592, Laws of Florida, Special Acts of 1947.

SECTION IV. "R-1" SINGLE FAMILY RESIDENTIAL DISTRICT.

A. Uses Permitted.

In this district a building or land shall be used only for the following purposes:

1. Single family dwellings.
2. Public and parochial schools.
3. Public buildings used exclusively by federal, state, county or city government for public purposes, except penal or correctional institutions.

4. Churches and church educational buildings.
5. Nurseries, but no commercial structure for sale of products.
6. Parks and playgrounds and community center.
7. Golf courses, except miniature courses, driving tees and the like, operated for commercial purposes.
8. Accessory buildings including one private garage attached or detached from the main structure, or private stable.
9. Non-commercial boat docks and slips.
10. Real estate signs, bulletin boards subject to provisions of Section XIII (9).

Lots in the Single Family Residential District (R-1) shall have an area of not less than 6000 square feet with a minimum width of 60 feet measured along the front property line. The maximum height of building and structure shall be 2½ stories or 35 feet. Not more than 30 percent of any lot shall be occupied by structures. There shall be a front yard of not less than 25 feet in depth measured from the street property line to the main front wall, of the building or structure. Where a front yard has already been established between two intersecting streets, the distance so established will determine the front yard depth of the dwelling to be erected in the back subsequently. There shall be a side yard on each side of every dwelling structure having a width of not less than 10 percent of the width of the lot, provided however that such side yard need not exceed 15 feet but shall not be less than 7½ feet. A rear yard on every lot shall not be less than 30 feet. Accessory buildings may be located in the rear yard provided they do not occupy more than 20 percent of the

rear yard area and are not nearer than 3 feet to any lot line.

SECTION V. "R-2" ONE AND TWO FAMILY RESIDENTIAL DISTRICT.

A. Uses Permitted.

1. Any use permitted in the R-1, Single Family District.

2. One and two family dwellings.

3. Home occupations and signs appertaining thereto subject to provisions of Section XIII (9).

B. Required Lot Area, Lot Width, Yards and Building Height Limit.

Lots in the Residential District (R-2) shall have an area of not less than 5000 square feet with a minimum width of 50 feet measured along the front property line. The maximum height of building or structures shall be 2½ stories or 35 feet. Not more than 30 percent of any lot shall be occupied by structures. There shall be for each dwelling unit a front yard of not less than 20 feet in depth measured from the street property line to the front of the main building or structure. Where a front yard depth has already been established in a block between intersecting streets by one or more structures, the mean of the distances so established shall determine the front yard depth of the dwellings to be erected in the block subsequently. There shall be a side yard on each side of every dwelling structure having a width of not less than 10 percent of the width of the lot, provided however that such side yard need not exceed 7½ feet. A rear yard on every lot shall not be less than 30 feet. Accessory buildings

may be located in the rear yard provided they do not occupy more than 20 percent of the rear yard and are not nearer than 3 feet to any lot line.

SECTION VI. COMMUNITY UNIT PLAN.

The owner or owners of any tract of land comprising an area of not less than ten (10) acres may submit to the Board of Adjustment a plan for the use and development of all of the tract of land for residential or other purposes consistent with the general overall development of the area of which the tract or tracts is/are a part. The plan of development prepared by the owner or owners shall be accompanied by a report showing: (1) that the property adjacent to the area included in the plan will not be adversely affected, (2) that the plan is consistent with the intent and purpose of this Resolution to promote the health, safety, morals, and general welfare, (3) that the buildings or structures shall be used only for single family dwellings, two family dwellings or multiple family dwellings, and the usual accessory uses such as garages, storage space and community activities, including parks, playgrounds, schools, and churches, (4) that the average lot area per family contained in the site, exclusive of the area occupied by streets, will be not less than the lot area per family required in the district in which the development is located. If the Board of Adjustment approves the plans, building permits may be issued, even though the use of the land and the location of the buildings to be erected in the area and the yards and open spaces contemplated by the plan do not conform in all respects to the district regulations of the district in which it is located.

SECTION VII. MULTIPLE FAMILY—RESDENTIAL DISTRICT "R-3".

A. Uses Permitted.

1. Any use permitted in the R-2 District.
2. Multiple family dwellings.
3. Apartment hotels.
4. Boarding and lodging houses.
5. Clinics, except animal hospitals.
6. Hospitals and sanitariums.
7. Guest houses, tourist homes and signs appertaining thereto subject to provisions of Section XIII (9).
8. Colleges, clubs, lodges, social and community center buildings, with signs appertaining thereto subject to provisions of Section XIII (9).
9. Accessory buildings and uses customarily incident to any of the foregoing uses, including private and storage garages when located on the same lot and not involving a business.

B. Required Lot Area, Lot Width, Yards and Building Height Limit.

In this district, except in exceptional cases mentioned in Section XIII, the principal buildings shall be located so as to comply with the following requirements: Minimum lot area:

5,000 square feet for a one family dwelling.

6,000 square feet for a two family dwelling and for each additional family unit, 1,600 square feet shall be allowed.

Minimum required yard width:

50 feet for one family

60 feet for two families

75 feet for four or more families

Maximum building height allowed:
3 stories or 35 feet.

Not more than 30 percent of the lot area shall be occupied by structures.

Front yards for one and two family dwellings shall not be less than 20 feet; for multiple family dwellings, not less than 15 feet, measured from the street property line to the front of the main building. Where front yards have already been established by structures erected in blocks between intersecting streets, the average line established shall determine the depth of the front yard. There shall be a side yard on each side of every dwelling structure having a width of not less than 10 percent of the width of the lot for one and two family dwellings; however, for one and two family dwellings, said side yards need not be more than 7½ feet. For apartment structures, the side yard shall be not less than 10 feet. For one and two family dwellings, the rear yard shall be the same as required for structures in the R-2 District. For multiple family dwellings the rear yard shall have an area sufficiently large to accommodate the storage of one automobile for each apartment, each space being at least 250 square feet in area.

SECTION VIII. NEIGHBORHOOD COMMERCIAL DISTRICT "C-1".

A. Uses Permitted.

1. Any use permitted in the R-3 Residential District.

2. Offices, banks, theatres (not drive-ins), beauty parlors, photograph studios, dry cleaning and laundry pick-up stations, barber shops, filling stations, florists, automobile sales rooms, parking lots and storage garages, telephone exchanges, restaurants and lunch rooms, police and fire stations, dairy products and ice cream stands, small animal hospitals, and any other retail businesses, except the following uses are prohibited expressly:

   Automobile wrecking yards, bottling works, building material store yards, cleaning and dyeing plants, coal and wood yards, contractors' plant and storage yards, ice plants, junk yards, laundries except the self-service type, machine shops, mechanical garages, stone yards, veterinary hospitals, storage warehouses, undertaking or mortuary parlors, dance halls, any kind of manufacture or treatment of products not clearly incidental to the product of a retail business conducted on the premises.

3. Advertising signs and structures.

4. Tourist camps constructed as specified in Section VIII (c).

5. Accessory buildings and uses customarily incident to any of the above uses.

6. Trailer camps or courts, constructed and operated pursuant to regulations prescribed by the State Board of Health (See Section VIII (c)).

7. Nothing herein would prevent the storage of materials and supplies incident to a business, within the building or in an accessory building located on the lot with the main building.

B. Required Lot Area, Lot Width, Yards and Building Height Limits.

1. Minimum lot area, front, side and rear yard requirements for dwellings shall be the same as prescribed in Section VII for the R-3 Residential District.

2. Rear yard depths of at least 20 feet shall be allowed back of stores.

3. Minimum off-street parking spaces shall be provided as specified in Section XII hereof.

4. Lot area, width and yard provisions do not pertain to dwelling units or living apartments located on second floors of commercial structures.

C. Special Provisions Relative to Bungalow Courts and Cabin Camps.

Bungalow courts, cabin courts or camps shall not be constructed upon sites less than 100 feet wide. The front yard lines shall be the same as set forth in Section VII for the Residential R-3 District, and rear yards must comply with the regulations of the State Board of Health, for the successful operation of septic tanks.

The lot area used by such camps or courts shall not be less than 10,000 square feet and shall allow not less than 2,000 square feet per building unit or per family.

The minimum distance between building units shall be for single bungalows, 15 feet; for duplexes, 20 feet. Side and rear yards shall be not less than 7½ feet.

Before a permit is granted for the construction of cabins or bungalows, plans shall be filed with the Zoning Director showing sizes and spacing of all buildings intended to be erected in the court or camp and the total area and boundaries of the site.

SECTION IX. RETAIL COMMERCIAL DISTRICT "C-2".

A. Uses Permitted.

1. Any use permitted in the C-1 Neighborhood Commercial District.
2. Any business of a retail type.
3. Mechanical garages.
4. Pressing and dry cleaning establishments.
5. Second-hand car lots.
6. Any general merchandising enterprise.
7. Bottling works.
8. Undertaking and mortuary parlors.
9. Contractors or building supply storage yards where located in the rear of the structure used as administrative office or sales room.
10. Accessory buildings and uses customarily incident to any of the above uses.
11. Drive-in theatres where site and arrangement of inlets and exits have been approved by the Board of Adjustment.

12. In this district those uses excluded from the C-1 district are likewise excluded from this district unless listed above as permitted.

B. Required Lot Area, Width, Front, Side and Rear Yards and Building Height Limit.

1. Except as provided in Section XIII, no building or structure in this district shall exceed 2½ stories or 35 feet.
2. Minimum lot area and yard requirements for dwellings shall be the same as prescribed in the R-3 Residential District.
3. Minimum off-street parking requirements shall be provided as specified in Section XII hereof.
4. Lot area, width and yard provisions do not pertain to dwelling units or living apartments located on second floors of commercial structures.

SECTION X. COMMERCIAL—LIGHT INDUSTRIAL DISTRICT "C-3".

A. Use Permitted.

1. Any use permitted in the C-2 Retail Commercial District.
2. Wholesale or distribution businesses including warehouses and storage yards.
3. Any light manufacturing which is not obnoxious or offensive by reason of emission of odor, fumes, dust, smoke, noise, or vibration. The permission of such industrial operations shall be subject to the approval of the Board of Adjustment.

4. Veterinary hospitals.

5. Accessory buildings and uses customarily incident to any of the above uses and located on the same lot or adjacent thereto.

B. Required Lot Area, Lot Widths, Front, Side and Rear Yards and Building Height Limits.

Same as for the C-2 Retail Commercial District.

SECTION XI. INDUSTRIAL DISTRICT "M-1".

A. Use Permitted.

1. Uses permitted in the C-3 Commercial Light Industrial District.

2. Any lawful use that is not obnoxious or offensive by reason of the emission of odors, fumes, dust, smoke, noise, vibration, radioactive waves, or substances, or possesses an abnormal explosion hazard. Any industry having such attributes may, by application to the Board of Adjustment, be granted permission under such terms and conditions as they shall determine shall best protect the welfare of the County. Any deviation from the terms and conditions shall render such permission void ab initio.

3. Junk yards, contractors' equipment storage yards, coal and wood yards, as approved by the Board of Adjustment.

4. Accessory buildings and uses customarily incident to any of the above uses.

B. Required Lot Areas, Lot Width, Front, Side and Rear Yards and Building Height Limits.

Same as for the C-3 Commercial-Light Industrial District.

SECTION XII. OFF-STREET PARKING REQUIREMENTS.

The following parking spaces shall be provided and satisfactorily maintained for each building or structure which, after the effective date of this resolution, is erected, altered, or enlarged, for use for any of the following purposes:

1. Dwellings or residences—at least one parking space for each dwelling unit in the building or buildings.
2. Auditorium, athletic field, stadium or race track, theatre, or other places of public assemblage, at least one parking space for each eight (8) seats provided for its patrons (based on maximum seating capacity).
3. Hotel, at least one parking space for each three (3) guest sleeping rooms.
4. Restaurant or other eating place, at least one parking space for each five (5) seats.
5. Hospital, sanitarium, nursing home, at least one parking space for each five (5) patients.
6. Stores, at least one parking space for each sixty (60) square feet of store floor area.
7. Office buildings, at least one parking space for each three hundred (300) square feet of office floor space.
8. Industrial or manufacturing establishments, at least one parking space for each four hundred

(400) square feet of gross floor space for each five (5) workers.

All parking spaces shall be on the same lot with the building, except that the Board of Adjustment may permit parking spaces to be on any lot or tract within five hundred (500) feet of the building, if it determines that it is impractical to provide parking on the same lot with the building.

SECTION XIII. GENERAL PROVISIONS AND EXCEPTIONS.

1. Towers, gables, spires, radio towers, pent houses, scenery lofts, cupolas, water tanks, silos, windmills, and similar structures may be built to a greater height than the limit established for the district wherein such structures are located, provided however that no structure in excess of the allowable building height shall be used for sleeping or eating quarters or for any commercial purpose other than such as may be incidental to the permitted uses of the main building, and further provided that no structure shall exceed in height the limitations determined to protect the glide angles established for any airport.

2. LOT OF RECORD. Where a lot has an area less than the required minimum area for the district in which it is located and was of record in Hillsborough County at the time of the adoption of this Resolution, said lot may be used for any use permitted in the district in which it is located.

3. NON-CONFORMING USES. Except as hereinafter provided, no building or land shall be used, constructed, reconstructed, extended or structurally altered except in conformity with the provisions set forth; pro-

vided, however, that any non-conforming uses existing on the date that these regulations become effective, may be continued, provided that the building or structure or land involved shall be neither structurally altered or enlarged. No non-conforming use, if once changed to a use permitted in the district, shall ever be changed back to a non-conforming use. A non-conforming use discontinued for 180 days shall not be restored. A non-conforming structure destroyed by fire or other cause more than 50% of its value, shall not be restored but shall revert to a use permissible in the district.

4. DEED COVENANTS. This Resolution shall not interfere with or abrogate or annul any easements, covenants, or other agreements between parties, provided however, that where this Resolution imposes a greater restriction upon the uses of buildings and land or requires larger open space than is imposed or required by other rules or regulations, or by easements, covenants or agreements, the provisions of this Resolution shall govern.

5. No building shall be moved onto or constructed on land that is subject to periodic or frequent flooding, nor shall any existing buildings so located be enlarged, repaired, or altered.

6. No houseboat which is not propelled by its own power shall be permitted to fasten to a dock, anchor to land or remain in any of the waterways, without special conditional permit, application for which shall be made to the Board of County Commissioners.

7. No permanent outdoor advertising signs shall be constructed, altered or moved unless a permit is obtained to do so from the Board of County Commissioners.

8. Where subdivision plats recorded prior to the adoption of this Resolution have specifically designated lots for commercial uses, such uses shall continue to be valid although not so indicated on the map.

9. Bulletin boards and signs. Lighted or unlighted bulletin boards or signs for public, charitable, religious or educational institutions such as churches, hospitals, schools and sanitoria, also announcement signs for professional offices, clinics, home occupations, boarding, rooming houses or tourist homes.

(a) Bulletin boards for churches, public buildings, charitable or educational institutions shall not exceed twelve (12) square feet in area.

(b) Temporary signs appertaining to the lease, hire or sale of the building or premises, which sign shall be removed after the completion of the lease, hire or sale, shall not exceed fifteen (15) square feet in area.

(c) Signs advertising a structure as a rooming house, boarding house, tourist home, or home occupations therein shall not exceed three (3) square feet in area. Such signs for boarding, rooming house or tourist home may be lighted.

SECTION XIV. BOARD OF ADJUSTMENT.

The Board of Adjustment shall have the powers and perform the duties set forth in Section 7, Chapter 24592, Laws of Florida, Acts of 1947.

SECTION XV. ADMINISTRATION.

These regulations shall be administered in conformance with Section 8, Chapter 24592, Laws of Florida, Acts of 1947, as amended by Chapter 25889, Acts of 1949, including the authority to designate and employ a Zoning Director, and establish a system of permits and schedule of permit fees.

SECTION XVI. INTERPRETATION, PURPOSE AND CONFLICT.

In interpreting and applying the provisions of this Resolution, they shall be held to be the minimum requirements for the promotion of the public health, safety, morals and general welfare of the County. If because of error or omission in the Zoning Map, any property in the territory of Hillsborough County as defined in Chapter 25889, Laws of Florida, Acts of 1949, is not shown as being in a Zoning District, the classification of such property shall be R-2, One and Two Family Residential District, unless changed by amendment to this Resolution.

SECTION XVII. ENFORCEMENT, REMEDIES, AMENDMENTS, VIOLATIONS AND PENALTIES.

These regulations shall be enforced by remedies set forth in Chapter 24592, Acts of 1947, and the amendment thereto, Chapter 25889, Acts of 1949.

Any party or parties proposing or recommending a change in the district regulations or district boundaries shall deposit with the Clerk of the Circuit Court of Hillsborough County, the sum of $10.00 to cover approximate cost of this procedure and under no condition shall

said sum or any part thereof be refunded for failure of said change to be adopted by the Board of County Commissioners.

The Board of County Commissioners shall give notice of public hearing on all applications or requests for amendments to the zoning resolution of changes in the boundaries or classification of zones, said notice being published at least three times in a newspaper of general circulation thruout the County over a period at least fifteen (15) days in advance of the hearing. The Zoning Director shall also have the lot or tract of land affected by the proposed change, posted with a notice advising as to the time and place of the public hearing and the nature of the change proposed. Said notice shall be posted at least fifteen days prior to the date of public hearing.

HILLSBOROUGH COUNTY ZONING REGULATIONS

Amended by the
BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY, FLORIDA
July 21st, 1950

APPLICATION TO CHANGE, MODIFY, ADD TO AND DELETE FROM THE EXISTING HILLSBOROUGH COUNTY ZONING REGULATIONS, CERTAIN REQUIREMENTS AND/OR RESTRICTIONS FOR THE PARTICULAR PURPOSE OF CLARIFYING THE ABOVE NAMED REGULATIONS WHICH WERE ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS ON JANUARY 3, 1950.

TO: THE BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY, FLORIDA

The Hillsborough County Zoning Adjustment Board of Hillsborough County, does, in compliance with provisions of the 1947 Zoning Law, Chapter 24592, No. 978 (Senate Bill No. 1015), and of the 1949 Amendment thereto, Chapter 25889, No. 893 (Senate Bill No. 990) of the Laws of Florida, hereby petition the Board of County Commissioners of Hillsborough County to change, modify, add to and delete from the existing Hillsborough County Zoning Regulations, certain requirements and/or restrictions, for the particular purpose of clarifying the above named zoning regulations which were adopted by the Board of County Commissioners on January 3, 1950, as follows:

1. BUILDINGS:

(a) A building is a structure having a roof supported by columns or walls, for the shelter, support or enclosure of persons, animals, or chattels.

(b) A temporary building is a structure erected to serve a temporary use only, which must be removed or demolished when the purpose for which it was erected has been discharged or satisfied.

(c) Tents: Tents are not considered as structures and will be permitted on a temporary basis only, the period of time of usage for an indicated purpose to be determined by the Zoning Director. No tents will be permitted in R-1 to C-1 districts inclusive.

(d) Trailers: Single trailers will not be permitted in R-1 to C-1 districts inclusive but will be permitted in A, C-2, C-3, and M-1 districts provided that each trailer (1) be erected on a substantial foundation and (2) be equipped with running water and toilet facilities consistent with rules of the State Board of Health.

2. HOME OCCUPATIONS: In Sec. 3-A, Page 11 of Zoning Regulations, add: "Day and night nurseries and dancing schools or other similar uses that are primarily commercial in character, will not be permitted in the R-2 district as 'Home Occupations.' "

3. REAR YARD: To Sec. IV, last paragraph, fourth line from the bottom, ending 30 feet, add: "however, where the design of the proposed structure does not permit a rear yard having a clear depth of 30 feet, yet the structure designed for the lot is in general harmony with the development of the area of which it is a part, then the depth of the rear yard may be varied to meet the requirements of the proposed design".

4. LOT FRONTAGE: Where minimum lot frontage of 60 feet is required in the Regulations, these requirements shall be adhered to except that variance may be permitted in plats submitted for approval where the lay-out of curved streets create irregular shaped lots at corners, provided that (1) a width of 60 feet be maintained at the front building set-back line, and (2) the area of 6000 feet, minimum, be maintained.

5. TRAILER STORAGE: Trailer storage will not be permitted in R-1 to C-1 districts inclusive, but will be permitted in A, C-2, C-3, and M-1 districts,

provided that the structural features and appurtenances thereto have been approved by the Zoning Director.

6. ROLLER SKATING RINKS: Roller skating rinks will not be permitted in R-1 to C-2 districts inclusive, but will be permitted in A, C-3, and M-1 districts, provided that the structural features and appurtenances thereto have been approved by the Zoning Director.

7. DOG KENNELS: Dog kennels will not be permitted in R-1 to C-2 districts inclusive, but will be permitted in A, C-3, and M-1 districts, provided that the structural features and appurtenances thereto have been approved by the Zoning Director.

8. MUCK LOTS: Muck lots, defined as open areas where muck, peat, fertilizer, etc, is stored and/or processed for sale, will not be permitted in R-1 to C-2 districts inclusive, but will be permitted in A, C-3, and M-1 districts.

9. ANIMAL LOTS: Animal lots, whether for impounding or for display and/or sale of horses, cows, mules, goats, hogs, etc. will not be permitted in R-1 to C-2 districts inclusive, but will be permitted in A, C-3, and M-1 districts, provided that such sites are approved by the health authorities.

10. LOT AREA AND LOT WIDTH—SEC. VII B

(a) Delete "minimum lot area" as written and substitute "5000 square feet for one and two family dwelling, and for each additional family unit, 1600 square feet shall be allowed."

(b) Delete "minimum required yard width" as written and substitute "50 feet for one and two family and 75 feet for three or more families."

11. SET-BACK LINES AT STREET CORNERS

Where it is desired to construct a dwelling on a corner lot in districts A, R-1, R-2, and R-3, and face same on the side street, which is at approximate right angles to the side line of the lots as shown on the plat plan, the side line set-back shall not be less on the other lots by the district in which it is located. Where a plat plan faces lots, within one block, on both streets, front yard and side yard variances shall be made only as approved by the Zoning Director.

HILLSBOROUGH COUNTY ZONING REGULATIONS

Amended by the
BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY, FLORIDA
August 31st, 1951

SECTION I.

The definition of a "Front Yard" in Section I shall be amended to read as follows: "A yard across the full width of the lot extending from the front line of the porch to the front line of the lot regardless whether such porch is open or closed."

The definition of "Used Car Lot" in Section I is hereby amended by changing the title to "Auto Sales Lot" and shall read as follows: "A lot or group of con-

tiguous lots, used for the display and sales of new or used automobiles, trucks, trailers, semi-trailers or other automotive equipment where no repair work is done."

SECTION II.

Section 3 C, special requirements, page 10, Hillsborough County Regulations, line 13 which reads: "Gandy Boulevard West of Dale Mabry—State Road 600", is hereby amended to read: "Gandy Boulevard East and West of Dale Mabry."

SECTION III.

Sections C IV, V & VI, Districts R-1, 2 & 3, captioned "required Lot Area, Lot Width, Yards and Building Height Limit", is hereby amended as it relates to side yard requirements in the above Districts. These provisions will now read: "There shall be a side yard on each side of every dwelling structure having a width of not less than seven and a half (7½) feet." Requirement of (10) feet for apartment houses in District R-3 shall remain unchanged.

SECTION IV.

Section VII, A, captioned "Uses Permitted" in the Multiple Family R-3 District, is hereby amended by adding "convalescent homes" to item 6. Said item 6 shall now be amended to read "Hospitals, sanitariums and convalescent homes."

SECTION V.

Section IX, A, 5, is hereby amended to read as follows: "Second hand car lots, (auto sales lots) providing however that the owner or lessee or operator thereof

shall hard surface the lot so used, with type of treatment acceptable to the Zoning Director, that will assure a smooth, dustless surface."

SECTION VI.

Section XI, A, 3, is hereby amended to read as follows: "Junk yards, contractor's equipment, storage yards, coal and wood yards and auto wrecking yards, as approved by the Board of Adjustment."

SECTION VII.

Section XIII of the Zoning Regulations of January 3, 1950, are hereby amended as follows:

1. Accessory Building. No building or structure accessory to the main structure on a lot or parcel of ground shall be constructed in R-1, 2 & 3 prior to the erection of the main structure.

2. CAR PORTS OR ATTACHED GARAGES. Car ports and also garages attached to but separated from the main body of the dwelling by a breezeway, shall be considered a part of the structure as a whole and shall comply with all set back lines of main structure. Garages, unattached from the main structure or dwelling, shall be considered accessory buildings and accordingly be located in the rear yard and be provided with such rear and side yard set backs as the regulation for accessory buildings provides.

3. PETITIONERS. A person petitioning the Board of County Commissioners for a change of zone classification shall give notice of his intentions by registered mail to all the land owners within the area as set forth in Section 5, Chapter 24592 (No. 978) Senate Bill No.

1015. Registered letters shall carry return cards which card must be presented with the petition as evidence of notification. This notice is in addition to the posting of the property by the Zoning Director.

SECTION VIII.

Section XVII of Zoning Regulations adopted January 3, 1950, provides that "any party or parties proposing or recommending a change in the district regulations or district boundaries shall deposit with the Clerk of the Court of Hillsborough County, the sum of $10.00 to cover the approximate cost of this procedure, etc." This portion of the regulation is hereby amended to provide for the payment of $15.00, an increase of $5.00 above the present fee as named above.

SECTION IX.

The amendments to the Zoning Regulations of January 3, 1950, promulgated by the Board of County Commissioners, as of July 21, 1950, are hereby amended as follows:

1. Paragraph 1 entitled "Buildings", subparagraph (d) entitled "Trailers" is hereby amended to read: "Single or Multiple trailers will not be permitted in R-1 to C-1 Districts, inclusive, but will be permitted in A, C-2, C-3 and M-1 Districts provided that each trailer (1) be erected on a substantial foundation and (2) be equipped with running water and toilet facilities consistent with rules of the State Board of Health."

2. Paragraph 2 captioned "Home Occupations" is hereby amended to read: "In section 3 A, Page 11 of Zoning Regulations, add: Day and night nurseries and

dancing schools or other similar uses that are primarily commercial in character, will not be permitted in the R-1, R-2 or R-3 Districts as Home Occupations."

3. Paragraph 11 captioned "Set Back Lines at Street Corners" is hereby amended to read: "Where it is desired to construct a dwelling on a corner lot in Districts A, R-1, R-2 and R-3, or a business structure in C-1 and C-2 front yard, rear yard and side yard variances shall be made only as approved by the Zoning Director."

SECTION X.

Section XIII is amended to add thereto the following numbered paragraph:

10. These Zoning Regulations shall be administered with reasonable consideration to the character and types of buildings in any particular locality and to the end that all structures permitted thereunder shall be in reasonable keeping with the general type, character and cost of structures within the particular area involved.

APPENDIX B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY.

FILED & DOCKETED
Oct. 21, 1953
CHAS. H. PENT, Clerk
/s/ P. L. Atkinson, D. C.

No. 93350-C

S. E. BRITTON,
Plaintiff,

-vs-

J. M. BREGAR, M. H. MABRY, ROGER D. FLYNN, A. M. WATSON, and W. M. MILES, as members of the Board of Adjustment and W. M. HARKNESS, JR. as Zoning Director of Hillsborough County, Florida, and FRED W. BALL, NICK C. NUCCIO, EVA M. BULLARD, E. W. SIMMONS and E. G. SIMMONS, as members of the Board of County Commissioners of Hillsborough County, Florida,

Defendants.

FINAL DECREE

This is a proceeding under the Declaratory Judgment Act brought by the Plaintiff and seeks to have determined his right to permit and authorization to construct a Drive-In Theatre on the following described premises in Hillsborough County, Florida:

Beginning at the NE corner of the NE¼ of the NE¼ of Section 4, Township 30 South, Range 18 East, and run thence west along the north boundary of Section 4 to a point 639.3 feet East of the Northwest corner of said NE¼ of NE¼ of Section 4, run thence South 400 feet; run thence West and parallel to the North line of said Section 4 a distance of 581.15 feet more or less to the East right of way line of Dale Mabry Highway; thence South along said East right of way line 200 feet; thence East and parallel to the North boundary of said Section 4 a distance of 205.0 feet; thence South parallel to the east right of way line of Dale Mabry Highway to a point 420.0 feet North of the South Boundary of the NE¼ of NE¼ of said Section 4; thence Easterly parallel to said South Boundary of NE¼ of NE¼ of Section 4, approximately 382 feet to a point 639.5 feet East of the West boundary of the said NE¼ of NE¼ of Section 4; thence South parallel to the East right of way line of Dale Mabry Highway a distance of 240 feet; thence Easterly parallel to and 190 feet north of the South boundary of said NE¼ of NE¼ of Section 4 to the West right of way line of the Atlantic Coast Line Railroad; thence Northeasterly along said A. C. L. right of way line to the East Boundary of Section 4, T30S, R18E; thence North along said East Boundary of Section 4 to point of beginning, located in Hillsborough County, Florida,

which brings on for determination the classification of the property by the Board of County Commissioners for this County under the applicable zoning Statute.

This property, among others, was by the Board of County Commissioners on the 3rd day of January, 1950, classified and placed in Zone "A" which is defined as "Agricultural" in which, among others, the following uses are permitted: one and two family dwellings; general farming, dairying, pasturage and the like, including livestock and poultry; airports and landing fields;

churches, schools, hospitals, and sanitariums; athletic fields; cemeteries; public works and public utility facilities; sawmills, planing mills and turpentine stills; and public structures owned and operated by the City, County or State and used for public purposes. Thereafter, on August 29, 1952, at a meeting called for that purpose pursuant to the petition of the paintiff after due notice, and no objections being made, the classification was changed from Zone "A" to Zone "C-2", which is generally defined and classified as "Retail Commercial District", which District includes Drive-In Theatres where the site and arrangement of inlets and exists have been appoved by the Board of Adjustment. Thereafter, the plaintiff was notified by the Board of County Commissioners that because of certain objections being made it would reconsider its Resolution of August 29, 1952 and on November 13, 1952 the said Board reconsidered its Resolution and rescinded its action of August 29 without any notice of the meeting being given as provided by the applicable Statute although the plaintiff was notified and present at such meeting. The meeting not being legally called for that purpose the action was without force and effect, so that the property remained in Zone "C-2". Thereafter, another meeting was held January 4, 1953, pursuant to notice, in which the Board declined to rezone the property from "A" to "2-C", but which action did not have the force and effect of changing the classification from "C-2" back to "A".

This property was, among others, by an Act of the Legislature in 1953 incorporated within the corporate limits of the City of Tampa and borders on what is known as Dale Mabry Highway. It is common knowledge that this is a heavy traveled Highway between St. Petersburg and Tampa and has in the past several years been fast developing as a Commercial District and is

continuously being so developed being occupied almo entirely by businesses and light industry while t neighboring or surrounding territory is used for re dential purposes. Many of the intervenors or objecto purchased their residences with notice of a substant sign on the premises that it was intended to erect Drive-In Theatre on this site. The objections are not much to the class or zone in which this property placed as to the erection of a Drive-In Theatre becau of the increased traffic occasioned thereby.

The placing of the property in Zone "A" ("Agric tural District") is unjust, arbitrary and is without gard to the conditions existing and has no relation public health, safety or welfare. The various actio taken by the Board serve only to place or leave t property in Zone "C-2" where, because of its locati and the development of this territory, is where the pr erty belongs and is so ADJUDGED by this decree. T only reason assigned by the Zoning Director for refusi a permit being "improper zone," the plaintiff is, the fore, entitled to his permit. It is so ORDERED.

DONE AND ORDERED at Tampa, Florida, t 21st day of October, 1953.

/s/ Harry N. Sandler.
HARRY N. SANDLER
CIRCUIT JUDGE

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1954
EN BANC

J. M. BREGAR, et al.,
Appellants,

-vs-

S. E. BRITTON,
Appellee.

CASE NO. 25,213

Opinion filed September 3, 1954

An Appeal from the Circuit Court for Hillsborough County, Harry N. Sandler, Judge

Thompson, McDonald & Moran and J. D. Hobbs, for Appellants.

Whitaker Brothers and Mabry, Reaves, Carlton, Anderson, Fields & Ward, for Appellee

HOBSON, J.:

This is an appeal from a final declaratory decree in favor of plaintiff-appellee S. E. Britton, directing that a building permit be issued to authorize Britton to build a drive-in theater on certain property situated in Hillsborough County.

Britton had instituted his suit in chancery against the Board of Adjustment, the Zoning Director, and the Board of County Commissioners of Hillsborough County. The bill in substance alleged the following history:

Britton in 1949 had purchased certain described lands and had placed a twenty foot billboard thereon, visible to persons traveling on Dale Mabry Highway announcing that "Another Britton theatre will be erected on this 20-acre site. 900 car capacity." On January 3, 1950, pursuant to Chapter 24592, Special Acts 1947, the Board of County Commissioners of Hillsborough County by resolution adopted certain rules and regulations zoning the plaintiff's land as "A" or "Agricultural". Adjacent property to the south of plaintiff's land was zoned "C-3" or "Commercial Light Industrial District", and is partly occupied by a septic tank manufacturing plant. The area to the west of plaintiff's land was zoned "C-1" or "Neighborhood Commercial District," and is bounded on the west by Dale Mabry Highway, while the area to the north of plaintiff's land was zoned "R-1" or "Single-family Residential District." The area to the east of plaintiff's land was zoned partly "R-1" and partly "C-3", the latter classification having been given to the right of way of the Atlantic Coast Line Railroad Company. The twenty-foot sign aforementioned was continuously maintained on Britton's land, and a number of homes were constructed in the area to the north after the sign was erected. Britton, allegedly in doubt as to his right to build a drive-in theater while his property had the "A" classification, applied to the defendant Board of County Commissioners on July 25, 1952, to have his property re-zoned to "C-2" or "C-3". Due notice of public hearing was published in a newspaper of general circulation and notices were posted on telephone poles on plaintiff's land. A public hearing was held on August 29, 1952, at which no person appeared to protest, and on the same date the Board unanimously adopted a resolution changing the classification of plaintiff's property from "A" to "C-2".

Relying upon this resolution, the bill continues, Britton commenced to prepare his land for the construction of the theater, and bought sound equipment and accessories, the expenditure totalling about $28,000. Subsequently, however, he was notified by the attorney for the Board that a protest had been received from certain citizens, and that the Board would reconsider its resolution of August 29, 1952. He immediately notified the Board of his expenditures in reliance upon their prior resolution. On November 13, 1952, with knowledge of plaintiff's expenditures, the Board rescinded the August 29th resolution.

Thereafter, plaintiff filed an amended petition with the Board asking that his property be re-zoned from "A" to "C-2" or "C-3", gave due notice, and at public hearings produced evidence that the Britton property was "adaptable to commercial use only" but the Board by resolution on January 4, 1953, refused to re-zone.

On January 21, 1953 plaintiff made application to the defendant County Zoning Director for a permit for non-conforming use, which was denied by the Director on January 23, 1953, with the notation "Improper Zone." Thereafter an appeal was taken to the Board of Adjustment, but was denied on February 19, 1953.

The bill concluded with a prayer that the court enter an order determining whether the original classification was valid or invalid, declaring plaintiff entitled to construct a drive-in theater on his property, and granting such other relief as was necessary and proper.

To the bill, defendants filed motions to dismiss and to strike, which were denied, but the court permitted interested property owners to intervene as parties defendant.

A joint and several answer filed by the defendant public officials admitted the material allegations as to the proceedings, zoning regulations and dates alleged in the bill, denied that the Board of County Commissioners had "full knowledge" of expenditures made by plaintiff before rescinding the resolution of August 29, 1952, and alleged, among other things, that the resolution was rescinded because it had not been properly adopted in that notices of hearing thereon had not been mailed by registered mail as prescribed by resolution of the Board adopted August 31, 1951, and as a result, interested property owners were not given an opportunity to be heard.

The answer of the intervening property owners admitted the material procedural facts alleged in the complaint.

Before the chancellor, counsel for the plaintiff, stating the issues of the case, contended that both in making the original "A" classification of plaintiff's land (by the resolution of January 3, 1950) and in adopting on November 13, 1952 the resolution rescinding the prior resolution of August 29, 1952 (this action, if valid, having the effect of reclassifying the plaintiff's property from "C-2" to "A") the Board had acted arbitrarily, capriciously, and contrary to law. Defendants denied this and contended that the resolution of August 29, 1952, was totally invalid and void by reason of lack of notice as required by the zoning regulations. The chancellor took testimony, and admitted in evidence, inter alia, a transcript of testimony at hearings before the Board of County Commissioners. The admission of this transcript is assigned as error, but because of the view we take of the case and the result which we reach we do not consider it necessary to dispose of the question predicated upon this alleged error.

The court in its final decree held that the meeting of November 13, 1952, at which the resolution of August 29th was rescinded, was not legally called, the action taken thereat was without force and effect, and the plaintiff's property therefore remained classified "C-2" which specifically authorizes the construction of a drive-in theater. The final decree continues as follows:

> "Thereafter, another meeting was held January 4, 1953, pursuant to notice, in which the Board declined to rezone the property from 'A' to 'C-2', but which action did not have the force and effect of changing the classification from 'C-2' back to 'A'.
>
> "This property was, among others, by an Act of the Legislature in 1953 incorporated within the corporate limits of the City of Tampa and borders on what is known as Dale Mabry Highway. It is common knowledge that this is a heavy traveled Highway between St. Petersburg and Tampa and has in the past several years been fast developing as a Commercial District and is continuously being so developed being occupied almost entirely by businesses and light industry while the neighboring or surrounding territory is used for residential purposes. Many of the intervenors or objectors purchased their residences with notice of a substintal sign on the premises that it was intended to erect a Drive-In Theatre on this site. The objections are not so much to the class or zone in which this property is placed as to the erection of a Drive-In Theatre because of the increased traffic occasioned thereby.
>
> "The placing of the property in Zone 'A' ('Agricultural District') is unjust, arbitrary and is without regard to the conditions existing and has no relation

to public health, safety or welfare. The various actions taken by the Board serve only to place or leave this property in Zone 'C-2' where, because of its location and the development of this territory, is where the property belongs and is so ADJUDGED by this decree. The only reason assigned by the Zoning Director for refusing a permit being 'improper zone', the plaintiff is, therefore, entitled to his permit. It is so ORDERED."

Considering some of the facts which would have bearing upon the constitutionality of the original "A" classification in this case, namely, the proximity to the property in question of the heavily traveled highway and the property zoned for business, it would seem that the case is quite close to *Miami Shores Village v. Bessemer Properties, Fla.*, 54 So. 2d 108, in which we affirmed an order of the chancellor holding a zoning ordinance unconstitutional. We find it unnecessary to decide whether the *Bessemer* case is controlling, however, because we are of the opinion that the action of the defendant zoning authorities on November 13, 1952, purporting to rescind the earlier resolution classifying plaintiff's property as "C-2", was illegal and void under the principles of equitable estoppel as applied by this court in *Texas Co. v Town of Miami Springs, Fla.*, 44 So. 2d 808. The cases of *Gross v. City of Miami, Fla.*, 62 So. 418 and *Miami Shores Village v. Brockway Post*, Fla., 24 So. 2d 33, are clearly distinguishable from the case at bar in that it affirmatively appeared in both of the cited cases that the party claiming to have been injured by his action in reliance upon an official determination had good reason to believe, before or while acting to his detriment, that the official mind would soon change, as it did. The record discloses no such fact in the case before us.

The action of the Board on November 13, 1952 having been invalid, we proceed to examine the resolution of August 29, 1952. Appellants contend that this resolution was invalid because not predicated upon notice to property owners by registered mail, as required by a regulation of the Board. Appellees contend that the Board had no power to prescribe these notice requirements, because they are supplemental to those imposed by the enabling act, Chapter 24592, Acts of 1947. Section 4 of this act authorizes the Board to establish or change zoning regulations after a public hearing thereon, but provides that "at least fifteen days' notice of the time and place of such hearing shall be published in a paper of general circulation in such county." It will be noted that this language is almost identical with that of its cognate provision in the general zoning laws, F. S. Sec. 176.05. It is plain, however, that if, as appellants contend, the public officials concerned had power to supplement the statutory notice requirements, they also had power to waive their own regulations, as we hold that they did in adopting the resolution of August 29th. *Appellants further contend, however, that the statutory notice requirements above quoted were not fulfilled before the August 29th hearing. We find this contention to be without merit. The record contains a certified copy of the resolution unanimously adopted on that date which recites that notice was published on August 14, 21 and 28, 1952, in the Tampa Daily Times. The description of the property in the resolution is different from the description given in the published notice, but it appears that the latter description includes the former property and appellants have not demonstrated otherwise.* The contention that the notice is invalid for not containing the words "drive-in theater" cannot prevail because it was clearly stated in the notice that the petition upon which the hearing was to be held was an appli-

cation "to re-zone from A to C-3" as in fact it was. Compare *City of Hollywood v. Rix, Fla.*, 52 So. 2d 135, in which the statutory notice and hearing requirements were not observed.

The intervenors cannot be heard to complain of this result, for the statutory notice requirements promulgated for their benefit were followed, and they made out no case below upon which the chancellor could have granted them relief.

Other questions are raised, but we find them without merit. The final decree appealed from is affirmed.

ROBERTS, C. J., TERRELL, THOMAS, SEBRING and MATHEWS, JJ., CONCUR DREW, J., concurs in judgment of affirmance only.

IN THE SUPREME COURT OF FLORIDA
JUNE TERM A. D. 1954

MONDAY, NOVEMBER 15, A. D. 1954

J. M. BREGAR, et al,

Appellants

-vs-

S. E. BRITTON,
Appellee

Counsel for Appellants having filed in this cause Petition for Rehearing and having been considered, it is ordered that said Petition be and the same is hereby denied.

IN THE SUPREME COURT OF FLORIDA
EN BANC
JUNE TERM A.D. 1954
FRIDAY, SEPTEMBER 3, 1954

J. M. BREGAR, et al,

Appellants,

—vs—

S. E. BRITTON,

Appellee.

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and arguments of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellants his costs by him in this behalf expended, which costs are taxed in the sum of $_____, all of which is ordered to be certified to the Court below.

The opinion of the Court in this cause prepared by Mr. Justice HOBSON was this day ordered to be filed.

APPENDIX C

EXCERPTS FROM ANSWERS OF INTERVENORS RAISING THE QUESTION OF LACK OF NOTICE

"- - - - that in connection with the public hearing on the petition to rezone the lands which was set at 2:00 P. M. on August 29, 1952, that no notice of the public hearing was mailed to any person by registered mail as was required by Paragraph 3 of Section VII of the amendment to the zoning regulations hereinbefore referred to, and that the Intervenors were all persons or parties who came within the description of owners, as is provided in Section 5 of Chapter 24592, Laws of Florida, Acts 1947; that because of the failure to comply with the zoning regulations that the so-called public hearing at 2:00 P. M. on August 29, 1952, was illegal and void and that due process of law was not afforded to the Intervenors and other interested persons in connection with the so-called public hearing, and the resolution of the Board of County Commissioners of Hillsborough County, Florida, adopted after the public hearing was illegal and void, and the change of the zoning classification from "A" to "C-2" was illegal and void." (R. 39, 40).

"- - - - and avers that the Intervenors and other persons interested in the rezoning of the lands had no knowledge of the adoption of the resolution or the intention of the Plaintiff to construct, operate and maintain a drive-in theater on the lands of the Plaintiff because of lack of sufficient and proper legal notice as was required by law and the zoning regulations of Hillsborough County, Florida; " (R. 41).

ASSIGNMENTS OF ERROR FOUR AND EIGHT

4. "That the Court erred in finding and decreeing that "due notice" was given of the public hearing on August 29, 1952, when the evidence shows the failure of S. E. Britton, the plaintiff, to notify the adjoining landowners by registered mail, as required by the Zoning Regulations of Hillsborough County, Florida." (R. 228).

8. "That the Court erred in the entry of its final decree on October 21, 1953, recorded in Chancery Order Book 463, at pages 507 to 510 inclusive." (R. 229).

IN THE SUPREME COURT OF THE STATE OF FLORIDA

J. M. BREGAR, et al.,
Appellants,
-vs-
S. E. BRITTON,
Appellee.

PETITION FOR REHEARING

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF FLORIDA:

Your Petitioners respectfully show unto this Honorable Court that an opinion and decision was rendered and filed in the above entitled cause under date of September 3, 1954, affirming the Final Decree of the lower Court, but your Petitioners deemed the same to be erroneous in the following respects and respectfully request a rehearing on the following grounds:

1. That the Court overlooked and failed to consider that the notice of public hearing published as required by Section 4, Chapter 24592, Special Acts of 1947, in connection with the rezoning resolution of August 29, 1952, was not published for the required period of time prior to the time fixed for the public hearing. Section 4 requires a published notice, as follows: *"At least fifteen days' notice of the time and place of such hearing shall be published in a paper of general circulation in such county."* The first publication of the notice was in the Tampa Daily Times, an afternoon daily newspaper, in the issue of August 14, 1952. The public hearing was fixed at "2:00 P. M. Friday, August 29, 1952", and it is, therefore, apparent that "at least fifteen days' notice" was not given by publication prior to the public hearing. This notice was *jurisdictional* and the failure to comply with the provisions of the Act deprived the appellants of due process of law under the provisions of Section 12 of the Declaration of Rights in the Constitution of the State of Florida, and Amendments V and XIV of the Constitution of the United States of America.

(National Transportation Co. v. Toquet, 123 Conn. 468, 196 A. 344; Austin, Nichols & Co. Inc. v. Gilman, 100 Conn. 81, 123 A. 32; R. I. Home Builders, Inc. v. Budlong Rose Co., 74 A. 2d, 237).

2. That the Court overlooked and failed to consider that the Board of County Commissioners were totally lacking in any jurisdiction *to rezone any land* that was not described by an appropriate legal description in the notice published in the newspaper which gave notice of public hearing on the petition, as of August 29, 1952, more land was rezoned than was described in the published notice and such action deprived the Appellants, who are the owners of homes abutting on the land re-

zoned of due process of law under the provisions of Section 12 of the Declaration of Rights in the Constitution of the State of Florida, and Amendments V and XIV of the Constitution of the United States of America.

(City of Hollywood v. Rix, Fla. 52 So. 2d 135., Wippler v. Hohn, (Texas), 110 S. W. 2d 409; Saks & Co. v. City of Beverly Hills, (Cal.), 237 P. 2d, 32).

(see sketch attached).

3. That the Court overlooked and failed to consider that the amendment to the zoning regulations of August 31, 1951, requiring "a person petitioning the Board of County Commissioners for a change of zoning classification shall give notice of his *intentions* by registered mail to all the land owners within the area as set forth in Section 5, Chapter 24592 (No. 978), Senate Bill No. 1015. Registered letters shall carry return cards which cards must be presented with the petition as evidence of notification. This notice is in addition to the posting of the property by the Zoning Director," became a part of the zoning regulations of Hillsborough County, Florida, having the force and effect of law and could not be amended, modified, changed or repealed, except at a public hearing duly called by the Board of County Commissioners and after published notice as required by the Act, and, therefore, the Board of County Commissioners did not have the power, jurisdiction and authority to waive the requirements of this provision of the zoning regulations, and that such provision of the zoning regulations is jurisdictional and no attempt was made by the petition to comply with such requirements in connection with rezoning hearing of August 29, 1952, the affected property owners received no notice and by reason of the failure to give notice the appellants, as owners of property abutting on the petitioner's land have been deprived of

due process of law under Section 12 of the Declaration of Rights in the Constitution of the State of Florida and amendments V and XIV of the Constitution of the United States of America.

(Tonray v. City of Lubbock, (Texas) 242 S. W. 2d 816).

4. That the Court overlooked and failed to consider the provisions of "Section IX. Retail Commercial District 'C-2' " which under "A". Uses Permitted. No. 11, provides as follows:

"11. Drive-In Theatres where site and arrangement of inlets and exits have been approved by the Board of Adjustment,"

in that the Final Decree of the lower Court, which is affirmed, bypasses entirely this provision of the zoning regulations and directs the *Zoning Director* to issue a permit to the Appellee to build a drive-in theater, without any requirement that the Appellee make an application to the Board of Adjustment to approve the "site and arrangement of inlets and exits" of his proposed drive-in theatre, all of which deprives the Appellants, who own homes abutting on the proposed drive-in theatre site, of due process of law, under the provisions of Section 12 of the Declaration of Rights in the Constitution of the State of Florida, and Amendments V and XIV of the Constitution of the United States of America.

5. That the Court overlooked and failed to consider that the competent and admissable evidence in the Transcript of Record shows that the public hearing held on November 13, 1952, was *legally called* upon a petition of the abutting property owners who were entitled to be notified in connection with the public hearing of August

29, 1952, and that said petition requested the Board of County Commissioners to rezone the land from a classification "C-3" as provided for in the resolution adopted August 29, 1952, to a zoning classification "R-1" or "A". That prior to the filing of these petitions, a notice by registered mail with return receipt requested was mailed to all affected property owners, as required by the zoning regulations, including the Appellee, and proof of such mailing and the registered mail return cards were filed with the Board of County Commissioners along with the petition. That notices were posted on the land, and in the issues of the Tampa Morning Tribune a paper of general circulation in Hillsborough County, Florida, a notice of public hearing was duly published in the issues of October 7, 14 and 21, 1952, the public hearing to be held at 2:00 P. M. on Thursday, October 23, 1952. That on the date set for the public hearing, the meeting was adjourned to November 6, 1952, at 2:00 P. M. and that on the date to which the meeting was adjourned, the meeting was further adjourned to November 13, 1952, at 2:00 P. M. (see original records of Board of County Commissioners transmitted to the Supreme Court of Florida.)

The lower Court, as well as this honorable Court, therefore, through oversight have held that the resolution of November 13, 1952, *was illegal*, and the power to amend, supplement or change zoning regulations which is vested in the Board of County Commissioners being a continuing power in the public health, safety and welfare, the Board of County Commissioners did have the jurisdiction and power to rezone Appellee's land to its former classification "A", even if the resolution of August 29, 1952, could be determined as valid. All of which has resulted in the Appellants being deprived of

due process of law under the provisions of Section 12 of the Declaration of Rights in the Constitution of the State of Florida, and Amendments V and XIV of the Constitution of the United States of America.

6. That the Court overlooked and failed to consider that there was no competent evidence before the lower Court as to the claimed expenditure of $28,000.00 by the Appellee, after the rezoning resolution of August 29, 1952, was adopted. The only testimony in the transcript of record tending to prove this fact is the testimony of S. E. Britton, the Appellee, which is contained in the private transcript of evidence, taken at the hearing before the Board of County Commissioners, which was offered as substantive proof at the trial, and which transcript of evidence is hearsay and inadmissable.

7. That the Court overlooked and failed to consider that the decree of the lower Court orders the Zoning Director of Hillsborough County, Florida, to issue a permit to build a drive-in theatre on the land, when by virtue of the provisions of Chapter 29548, Special Acts of 1953, the City of Tampa annexation law, all jurisdiction, right, power and authority to issue a building permit, as of May 18, 1953, became vested in the City of Tampa, and the City of Tampa was not made a party to the suit in the lower Court, and the decree of the lower Court directs an act to be done by the Zoning Director of Hillsborough County, Florida, that would be null, void and of no force and effect.

8. The Court overlooked and failed to consider that there is no competent legal evidence in the record in this case to establish the alleged expenditures by the Appellee, or the alleged posting of a sign on Appellee's property of his intention to build a drive-in theatre, or of the allegation that some of the abutting property owners ac-

quired their property and built their homes after the erection of the alleged sign by the Appellee. Therefore, the basis of the equitable estoppel applied against the County Commissioners by this Court in its opinion is based upon assumed facts which have been shown by legal and competent evidence to exist.

Respectfully submitted,

/s/ J. D. Hobbs

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THOMPSON, McDONALD and MORAN

By /s/ William E. Thompson

Attorneys for Intervenors